

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 12-12020-mq

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6 | In the Matter of:

7 | RESIDENTIAL CAPITAL, LLC, ET AL.,

8 | Debtors.

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United States Bankruptcy Court

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New York, New York

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September 29, 2016

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9:02 AM

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21 | BEFORE.

22 HON. MARTIN GLENN

25 U.S. BANKRUPTCY JUDGE

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1
2 Trial Regarding Reed Claims Objection. Trial Set for September
3 26 at 9:00 AM, Continuing Day to Day on September 27th,
4 September 28th, September 29th and September 30th.
5

6 Hearing RE: Order Requiring Joan Kline to Appear and Testify
7 at Trial on Thursday, September 29, 2016, or in the
8 Alternative, to Show Cause at that Time Why She Should Not Be
9 Held in Contempt Pursuant to Federal Rule of Civil Procedure
10 45(g).

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9 BY: BARBARA K. HAGER, ESQ.

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12 FRANK REED, PRO SE CREDITOR

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated.

3 Good morning. We're here in Residential Capital,
4 number 12-12020. This is a continuation of the trial of a
5 contested matter concerning the claim of Frank Reed.

6 Good morning.

7 MS. HAGER: Good morning.

8 MR. REED: Good morning, Your Honor.

9 THE COURT: Mr. Reed, I gather that Ms. Kline is here;
10 is that correct?

11 MR. REED: Yes, Your Honor.

12 THE COURT: All right. You wish to call her as a
13 witness?

14 MR. REED: I do, Your Honor.

15 THE COURT: All right.

16 MR. REED: And I guess -- what is it -- we move her
17 declaration?

18 THE COURT: Yes, if you would -- let's have her come
19 on up.

20 Ms. Kline, if you'll come on up? You'll come up to
21 the witness box, and you'll be sworn. There should be water
22 and a pitcher as well.

23 (Witness sworn)

24 THE COURT: All right, please have a seat. Move the
25 microphone close enough to you that we can ensure that your

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 voice gets picked up.

2 THE WITNESS: Sure. Better?

3 THE COURT: All right. The client declaration is
4 Claimant's Exhibit 10.

5 (Ms. Kline's declaration was hereby marked for identification
6 as Claimant's Exhibit 10, as of this date.)

7 THE COURT: Mr. Reed, you wish to offer the
8 declaration into evidence?

9 MR. REED: I'm sorry, Your Honor?

10 THE COURT: Do you wish to offer Ms. Kline's
11 declaration in evidence?

12 MR. REED: Yes, Your Honor.

13 THE COURT: Any objection?

14 MS. HAGER: Your Honor, objections to paragraphs 4 and
15 5 only to the extent that they mention the property at 133
16 Brookschase, which is no longer part of the case. The
17 insinuation is that money from Ms. Kline would have gone to be
18 used for both of those properties.

19 THE COURT: Overruled.

20 MR. REED: Okay.

21 THE COURT: The declaration is in evidence.

22 (Ms. Kline's declaration was hereby received into evidence as
23 Claimant's Exhibit 10, as of this date.)

24 THE COURT: All right. And we begin with your cross-
25 examination, and then Mr. Reed will have an opportunity to

1 question you after that, okay?

2 THE WITNESS: Thank you.

3 THE COURT: All right.

4 Go ahead, Ms. Hager.

5 CROSS-EXAMINATION

6 BY MS. HAGER:

7 Q. Good morning, Ms. Kline.

8 A. Good morning.

9 Q. At the time that Mr. Reed approached you for a loan, he
10 was living in Virginia. Is that right?

11 A. To my recollection, yes, he was. And I may -- I may have
12 the timeline off by --

13 Q. Do --

14 A. -- a few months. I believe we talked during the summer.

15 Q. Okay. Do you remember testifying in your deposition that
16 he lived in Virginia at the time he --

17 A. I --

18 Q. -- approached you for a loan?

19 A. I believe had moved to Virginia, yes.

20 Q. Okay. And I'll just remind you, let me finish my question
21 before you start --

22 A. Oh, sorry.

23 Q. -- to answer, or it doesn't leave a clear record, okay?

24 A. No problem.

25 Q. And Mr. Reed asked you for a loan of 300,000 dollars; is

1 that right?

2 A. Yes, we were in discussion.

3 Q. And this loan would have been an unsecured loan; is that
4 right?

5 A. Yes.

6 Q. And Mr. Reed wanted to use the funds to work on property
7 in Virginia; is that right?

8 A. To the best of my knowledge.

9 Q. And you considered lending to him; is that right?

10 A. Yes, I did.

11 Q. Now, you've never leant money to anyone besides Mr. Reed;
12 is that right?

13 A. Correct.

14 Q. And in 1993, you leant him 9,000 dollars, correct?

15 A. I can prove that -- that's the amount I can prove.

16 Q. Okay. And in 1996, you leant him 14,000 dollars; is that
17 right?

18 A. Again, that's what I have proof of.

19 Q. And he paid these amounts back, correct?

20 A. Yes, he did.

21 Q. And did he pay them back in a lump sum or in payments?

22 A. I believe they were installments.

23 Q. And were there terms associated with the repayment?

24 A. You mean like a length, a -- I -- to expect the payment
25 back?

1 Q. So what I mean by terms, was there an interest rate or a
2 length of time within which he had to repay the funds?

3 A. So what I can recall it was five percent rate, and I don't
4 remember talking about a term that -- the date that he was
5 going to repay by.

6 Q. Now, when you mentioned that you had proof of the 9,000-
7 dollar loan and proof of the 14,000-dollar loan, I think you're
8 referring to cancelled checks that --

9 A. Yes.

10 Q. -- you shared with me during your deposition; is that
11 right?

12 A. That's correct.

13 Q. Okay. And besides the cancelled checks that you shared
14 with me for the amounts of 9,000 dollars and two separate
15 checks that totaled 14,000 dollars, you don't have any other
16 records of any other loans. Is that correct?

17 A. No, I don't have proof.

18 Q. Okay. Now, besides the loans for 19,000 (sic) and 14,000,
19 have you ever leant Mr. Reed more money?

20 A. Yes.

21 Q. And when was that?

22 A. I believe it was associated with the two checks for 9,000
23 and 5,000 in '96. Do I have that correct?

24 Q. Now, do you remember when I asked you that question in
25 your deposition and you testified that there weren't any other

1 loans that you could recall?

2 A. I thought you were speaking about the amount. Could you
3 please rephrase your question?

4 Q. Sure. Have you ever leant -- besides the 9,000 dollars
5 and the 14,000 dollars --

6 A. Right.

7 Q. -- you just testified to, did you ever lend Mr. Reed
8 additional funds?

9 A. Yes.

10 Q. Okay. And when did you do that?

11 A. It was around -- in '96, in the neighborhood of April, the
12 same time that the -- these checks are dated.

13 Q. And how much was that?

14 A. It was 100,000.

15 Q. But you don't have a check for that?

16 A. No, ma'am, I don't.

17 Q. Okay. And do you keep copies of your checks all in the
18 same place?

19 A. Not from twenty years ago, no.

20 Q. Okay. How --

21 A. These were found serendipitously.

22 Q. Yeah, but you came upon the one from 1993 and two from --

23 A. Right.

24 Q. --1996, though, right?

25 A. Yes.

1 Q. Okay. So when he --

2 MS. HAGER: Excuse me, strike that.

3 Q. At the time that he asked you for the 300,000 dollars, you
4 had approximately 863,000 dollars in various bank and
5 investment accounts; is that right?

6 A. That's what I could prove, yes.

7 Q. And you came into this money from an inheritance as the
8 only child after your parents passed away some years ago; is
9 that right?

10 A. Correct.

11 THE COURT: Can you just tell me again, how much did
12 you have in total?

13 THE WITNESS: I can find the paper.

14 THE COURT: You -- just -- I -- just whatever you
15 told --

16 THE WITNESS: Over 800,000.

17 THE COURT: Okay, thank you. All right.

18 THE WITNESS: That I could prove at that time.

19 THE COURT: Yeah, okay. And when was it that he asked
20 for the 300,000 dollars?

21 THE WITNESS: He asked me in '08.

22 THE COURT: Okay. Go ahead.

23 Q. So when you actually inherited the funds, you inherited
24 between 500- and 700,000 --

25 A. Right.

1 Q. -- is that right?

2 A. That was my -- correct, that was my estimate.

3 Q. Okay. And that had increased over time to the 863- that
4 you told me about --

5 A. Yes.

6 Q. -- is that right? Okay.

7 And this inheritance that we're talking about, that's your
8 nest egg, so to speak, correct?

9 A. Yes, it is.

10 Q. You're presently employed as a Catholic school teacher,
11 correct?

12 A. Correct.

13 Q. And how long have you been doing that?

14 A. This is my fortieth year.

15 Q. Okay. And what's your annual salary as a Catholic school
16 teacher?

17 A. Oh, in the neighborhood of 45-, 46,000.

18 Q. And do you invest any of your annual salary, or do you use
19 it for your living expenses and our day-to-day?

20 A. I invest parts of my salary, yes.

21 Q. But if you were to lose part of your investment, you
22 really wouldn't have much income and cash flow from salary to
23 replenish it; is that right?

24 A. Yes.

25 Q. Now, when Mr. Reed approached you for the 300,000-dollar

1 loan, you were not aware that he was late on his mortgage
2 payments, were you?

3 A. I don't believe I had that knowledge at that time. I'm
4 not sure of the timeline when he was late on his payments.

5 Q. And had you been -- excuse me, had you been made aware
6 that Mr. Reed was late paying his mortgage for a number of
7 months, you wouldn't have considered lending him 300,000
8 dollars, would you?

9 A. I would say probably not, but I didn't have the knowledge.

10 Q. But you would have -- had you had that knowledge, you
11 would have viewed that as a risky investment, wouldn't you?

12 A. I -- yes, there would be risk involved. There's always
13 risk involved.

14 Q. And you would have been concerned about being repaid,
15 wouldn't you?

16 A. Over two missed mortgage payments? I think the
17 circumstances needed to be more grave than just two missed
18 mortgage payments.

19 Q. Well, I don't think I said two, but let me just clarify
20 the question.

21 A. Okay.

22 Q. When in 2008 was this conversation?

23 A. Well, Mr. Reed and I had many conversations. I believe it
24 was during the summer when we spoke.

25 THE COURT: The summer of 2008?

1 THE WITNESS: Yes. I'm sorry, thank you.

2 THE COURT: It's okay. No, it's all right.

3 Q. Okay. So somewhere between -- and there may have been
4 more than one conversation, but --

5 A. Oh, that's not --

6 Q. -- throughout -- let's say throughout June, July, and
7 August of 2008, somewhere in there? Would that be fair?

8 A. That seems to be an accurate --

9 Q. Okay. So if I told you that he was six
10 months -- approximately six months behind on his mortgage when
11 you had that payment, had you known that, would you have been
12 concerned --

13 THE COURT: I think you misspoke.

14 MS. HAGER: Okay.

15 THE COURT: I think you said, when you had that
16 payment.

17 MS. HAGER: Let me just strike that. Let me just
18 start over.

19 Q. If I told you that at the time he approached you for a
20 loan of 300,000 dollars, which was sometime, you're saying, in
21 the summer of 2008, if you had the knowledge that he was
22 approximately six months behind on his mortgage payment on his
23 primary mortgage on Matlack, would you have been concerned --

24 MR. REED: Objection. Speculative.

25 Q. -- about being --

1 THE COURT: Overruled.

2 Q. -- repaid?

3 THE COURT: Overruled. Go ahead.

4 THE WITNESS: You want me to answer?

5 A. I knew that he had also owned other properties.

6 Q. Okay. My question, would you have been concerned about
7 being repaid knowing that he was six months' delinquent on his
8 primary mortgage?

9 A. Yes, I would have concern.

10 Q. Okay. And he was asking you for a long of 300,000
11 dollars, which was more than one-third of your entire liquid
12 net wealth; is that correct?

13 A. Correct.

14 Q. Okay.

15 MS. HAGER: Thank you. No further questions.

16 THE COURT: All right. Mr. Reed.

17 REDIRECT EXAMINATION

18 BY MR. REED:

19 Q. What other assets did you have at that time besides the
20 liquid assets?

21 A. I know I had the house. I'm sure I had retirement funds.

22 Q. Can you -- was there a mortgage on the -- on the house?

23 A. No, there wasn't.

24 Q. Can you give an approximate value, in your mind, of what
25 you think the house was worth at that time?

1 A. No, I'm sorry. I haven't -- I have no basis to pull from.
2 I'm sorry. I can tell you what I paid. I can tell you
3 approximately what it's worth today. Could I tell you what the
4 in between? No.

5 MS. HAGER: Objection. Move to strike the portion of
6 the nonresponsive answer.

7 THE COURT: Overruled.

8 Q. I'd like to hear those numbers.

9 A. Okay, I bought it for 190,000, and today properties of a
10 similar size and shape in my neighborhood are worth around
11 350,000.

12 Q. Okay. Do you have an idea how much your retirement -- and
13 you said -- you mentioned other money, too?

14 A. Right. I know it was in the statement that I gave --

15 THE WITNESS: Am I allowed to look up things? Your
16 Honor, I have paperwork with me.

17 THE COURT: What do you want to look up? Yeah, go
18 ahead.

19 THE WITNESS: It was what I submitted to the Court at
20 my --

21 THE COURT: Yeah, I'll --

22 THE WITNESS: -- deposition.

23 THE COURT: -- permit you to do that. If Ms. Hager
24 wants to see it, then you can show it to her.

25 THE WITNESS: Okay.

1 MS. HAGER: I have that. No objection.

2 THE COURT: All right, go ahead.

3 THE WITNESS: Okay. I don't have my glasses here.

4 THE COURT: This is not a memory contest.

5 THE WITNESS: Okay, thank you. I'd lose.

6 A. At that time, there -- in one retirement account, there
7 was 132,000 dollars. I know that I had been saving in another
8 company. Money is withdrawn from my salary every two weeks. I
9 don't know the value of that account.

10 THE COURT: May I just ask you this?

11 THE WITNESS: Sure.

12 THE COURT: Is that 132,000 in your retirement
13 account, is that included in the 863,000?

14 THE WITNESS: No, it's not. Okay.

15 MR. REED: Your Honor, may I approach?

16 THE COURT: Yes, you can.

17 THE WITNESS: Can I --

18 MR. REED: Get your papers.

19 THE WITNESS: You just want to ask if it's the same
20 paper? Yes, we're pulling out the same paper, Your Honor.

21 THE COURT: Okay.

22 THE WITNESS: All right.

23 THE COURT: Just show Ms. Hager what you're looking
24 at.

25 THE WITNESS: It was --

KLINE - REDIRECT

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1 MS. HAGER: Is there a stamp on it?

2 THE WITNESS: Yes.

3 MS. HAGER: What is it?

4 THE WITNESS: It is the total of my assets that I had
5 a record -- oh, what is it? Kline 2.

6 MS. HAGER: That's fine, thank you.

7 THE COURT: Okay, go ahead.

8 Ms. Kline.

9 THE WITNESS: Thank you.

10 MR. REED: Your Honor, I have a Claimant 2 to make
11 sure -- documents that are the second exhibit to her
12 deposition.

13 THE COURT: All right, I have it open in front of me.

14 Go ahead.

15 BY MR. REED:

16 Q. Can you look through these and make sure these are the
17 ones that you believe you handed in that deposition?

18 THE COURT: That's your signature; is that correct?

19 THE WITNESS: Yes, that's my signature, sir.

20 THE COURT: Okay.

21 THE WITNESS: I know I had my tax statement, and then
22 I numbered the papers through to correlate to addition on the
23 other one.

24 THE COURT: All right, so the 863,507 is the thing --

25 THE WITNESS: Yes, sir.

1 THE COURT: -- that you testified about?

2 THE WITNESS: Yes.

3 THE COURT: And the 132,767, that's the --

4 THE WITNESS: It's the retirement --

5 THE COURT: -- retirement account?

6 THE WITNESS: -- that I have one set of paperwork for.

7 THE COURT: Okay, that's fine.

8 THE WITNESS: Okay? Thank you.

9 THE COURT: Go ahead.

10 THE WITNESS: Okay.

11 A. I believe they're all here.

12 Q. You --

13 THE COURT: You need to be near a microphone, so you
14 either --

15 MR. REED: Right, I'm just --

16 THE COURT: -- have to go back -- don't crawl through
17 the room, okay?

18 MR. REED: I'm sorry, Your Honor.

19 Q. So in the first page of Claimant 2, there's a total number
20 that you signed your name under. That number is
21 all -- virtually a million dollars?

22 A. Correct.

23 Q. What is -- am I to understand that this is your liquid
24 amount or your cash that you thought you had? Cash, not --

25 MS. HAGER: Objection to form.

1 THE COURT: Sustained.

2 This doesn't include whatever value you had in the
3 house?

4 THE WITNESS: Correct.

5 MR. REED: Yes.

6 THE COURT: It does not include the house.

7 THE COURT: All right.

8 MR. REED: That's what I was trying to say.

9 THE WITNESS: And there's other retirement accounts
10 also that I did not include.

11 Q. Do you have any recollection of how much maybe those other
12 retirement accounts, cumulatively, might be?

13 MS. HAGER: Objection. Calls for speculation.

14 A. We're going back twenty years, sir.

15 THE COURT: You -- I don't want you to guess.

16 THE WITNESS: Okay. I don't -- I --

17 THE COURT: All right. Are you able to approximate
18 how much --

19 THE WITNESS: No.

20 THE COURT: -- you have in the accounts --

21 THE WITNESS: Not without a calculator --

22 THE COURT: -- without --

23 THE WITNESS: -- and a pen.

24 THE COURT: Okay.

25 THE WITNESS: Okay?

1 THE COURT: Ask your next question, Mr. Reed.

2 THE WITNESS: I can tell you that I have 250 dollars
3 withdrawn from my paycheck, and I've worked for the same
4 institution since they initiated this process.

5 THE COURT: What school do you teach at?

6 THE WITNESS: St. Laurentius.

7 THE COURT: And where is that?

8 THE WITNESS: It's in the neighborhood of Fishtown.

9 THE COURT: Okay, thank you. I'd love to know whether
10 the students have changed so much over forty-five years, but we
11 don't have to go into that.

12 Go ahead, Mr. Reed. Ask --

13 THE WITNESS: Yes, they have.

14 THE COURT: -- your next question.

15 BY MR. REED:

16 Q. So you mentioned to the Court that you would have had
17 concerns about my -- lending me money, and I believe you said
18 there's risk always involved in lending money. Can you say
19 definitively here today why you decided not to lend me money?
20 What was the reason in your mind why you did not lend me the
21 money?

22 MS. HAGER: Objection to form.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: Okay, thank you. I wasn't sure.

25 THE COURT: Yeah.

1 A. As time progressed and we had more conversations, I found
2 out that there was a buyer interested in your property in
3 Moorestown. And then, that deal evaporated. And there were
4 other issues going on, and then the foreclosure came. And I
5 ran. I'm going to be honest. I ran.

6 THE COURT: Do you know why a foreclosure proceeding
7 was started on the Moorestown home?

8 THE WITNESS: Should I guess?

9 THE COURT: No, you -- did Mr. Reed tell you? I don't
10 know what he said, but I'm -- I'd like to know, did you know
11 why a foreclosure proceeding was started with respect --

12 THE WITNESS: Do I have --

13 THE COURT: -- to the Moorestown --

14 THE WITNESS: -- one -- with one hundred percent
15 accuracy? No, I can't tell you why. I can make an educated
16 guess.

17 THE COURT: Did you have -- at the time that you
18 decided to run from it --

19 THE WITNESS: Right.

20 THE COURT: -- did you have a view as to why the
21 foreclosure had been started?

22 THE WITNESS: More than likely, as I said before,
23 Frank and I talk. He was above board with giving me
24 information, and he himself told me that the foreclosure was
25 happening and that the buyer who he had lined up for his house

1 disappeared. Foreclosure was enough to -- for me to end the
2 process.

3 THE COURT: What was your under -- did you have an
4 understanding of why a foreclosure proceeding had been started?

5 THE WITNESS: A general idea that --

6 THE COURT: What was your --

7 THE WITNESS: My general idea was there wasn't enough
8 to money to go around to finance the repairs on the house in
9 Virginia plus pay for the other property in Virginia. And I
10 know Frank had rental properties in addition to that, so it
11 seemed like the house in Moorestown maybe was at the bottom of
12 the list.

13 THE COURT: Okay, all right.

14 Mr. Reed, go ahead.

15 You're done?

16 MR. REED: Yeah.

17 THE COURT: Okay. Ms. Hager, do you have any other
18 questions?

19 MS. HAGER: Yes.

20 REROSS-EXAMINATION

21 BY MS. HAGER:

22 Q. With respect to your retirement account, you wouldn't have
23 liquidated that to lend money to Mr. Reed, would you?

24 A. That would seem rather foolish.

25 Q. And you testified that your residence was owned free and

1 clear. You wouldn't have taken out a mortgage on that property
2 to lend proceeds to Mr. Reed, would you?

3 A. That would be highly unlikely.

4 Q. Okay, thank you.

5 THE COURT: All right.

6 MS. HAGER: Oh, sorry. I'm very sorry. One other
7 thing.

8 Q. Are you positive that these conversations happened in the
9 summer of '08?

10 A. No, I'm not a hundred percent positive. What --

11 Q. Is --

12 A. -- I -- as a teacher, I'm off during the summer.

13 It -- I'm much more available for conversations with Frank. We
14 get on, and we chat away twenty minutes, a half hour at a time.

15 Q. Would it be possible that they might have happened in the
16 summer of '09?

17 A. Oh, I don't believe so.

18 Q. Okay. Thank you.

19 MS. HAGER: Nothing further.

20 THE COURT: All right. Mr. Reed, anything further?

21 MR. REED: Yeah, about the timeline, Your Honor.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. REED:

24 Q. You said the word "conversations"?

25 A. Right.

1 Q. Would you say --

2 THE COURT: Don't ask a leading question.

3 MR. REED: Yes. Let -- how --

4 THE COURT: That's just --

5 A. We --

6 THE COURT: A formal question.

7 A. Do we speak often? Yes. Do two weeks go by without us
8 speaking? That's the rare case. Is that what you wanted to
9 know? No? Okay, sorry.

10 Q. Was my request made in -- or the discussion about the need
11 for money and a request -- was it just like one instance in
12 time, or how would you describe that --

13 THE COURT: Let me ask it this way. Did you have one
14 conversation or more than one conversation?

15 THE WITNESS: We definitely had more than one
16 conversation. You -- if you know anything about Mr. Reed, he's
17 a man of words. Okay? And yes, we would have talked quite a
18 few times about it. I don't jump into anything easily or
19 lightly without due consideration.

20 MR. REED: Okay, Your Honor, I think that's it.

21 THE COURT: All right. Ms. Hager, anything else?

22 MS. HAGER: No, Your Honor. Thank you.

23 THE COURT: Thank you very much for your testimony.

24 THE WITNESS: Thank you.

25 THE COURT: Okay.

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1 All right, we'll take a ten-minute recess.

2 Mr. Reed, you'll resume in the witness box. I'll give
3 you a chance to get up there. Bring whatever papers -- well,
4 Ms. Hager, what papers do you want him to have up there so he
5 doesn't have to go back and forth?

6 MS. HAGER: The --

7 THE COURT: Well, you can bring him whatever you want.

8 MS. HAGER: I'm going to give him a binder --

9 THE COURT: Okay.

10 MS. HAGER: -- of deposition transcripts, which I also
11 have to share with the Court, and my -- the trust's --

12 THE COURT: All right.

13 MS. HAGER: -- exhibits.

14 THE COURT: We're going to take our ten-minute recess.
15 You give Mr. Reed anything that you're going to want him to
16 look at so we don't have to go back and forth, okay? And
17 you'll --

18 MS. HAGER: Okay. And may I leave a --

19 THE COURT: Absolutely.

20 MS. HAGER: -- binder for the Court?

21 THE COURT: Just put it up on the --

22 MS. HAGER: Okay, thank you.

23 THE COURT: -- on the ledge, okay?

24 Thank you.

25 MR. REED: What is it you want me to have?

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 MS. HAGER: I'll give it to you.

2 THE COURT: She's going to give you whatever you need.

3 Just bring yourself and --

4 MR. REED: Okay.

5 (Recess from 9:26 a.m. until 9:42 a.m.)

6 THE COURT: We're ready for the cross-examination of

7 Mr. Reed.

8 Mr. Reed, you're still under oath.

9 Ms. Hager, go ahead.

10 MS. HAGER: Just one quick matter of housekeeping
11 before get started.

12 THE COURT: Yes.

13 MS. HAGER: At some point I think I'll be referencing
14 some of Mr. Reed's depositions transcript, and I've given a
15 binder of those to Your Honor. I have extras. Do your law
16 clerks need a bound copy?

17 THE COURT: Is it in the binders?

18 MS. HAGER: It -- it can be. I have one copy that's
19 bound and one that isn't. I can give the unbound copy to Mr.
20 Reed and the bound copy to the clerks.

21 THE COURT: It doesn't matter. You can give them
22 bound or unbound.

23 MS. HAGER: Okay.

24 (Pause)

25 MS. HAGER: Sorry, my mistake. Okay.

1 CROSS-EXAMINATION

2 BY MS. HAGER:

3 Q. Mr. Reed, you moved from the Matlack property to Old Dell
4 Trace in November of 2008, correct?

5 A. Yes.

6 Q. And that coincides with when Mr. Cooper moved into Matlack
7 and paid you the 400,000 dollars, correct?

8 A. Yes.

9 Q. And at that time --

10 THE COURT: Just tell me again one more time. What
11 was the date?

12 MS. HAGER: November 2008.

13 THE COURT: Thank you.

14 Q. And at that time, you already owned the property on Old
15 Dell Trace, correct?

16 A. Yes.

17 Q. And you had a first on that property with Taylor, Bean &
18 Whitaker and a second on that property with Chase, correct?

19 A. Yes.

20 Q. And at that time, November 2008, you didn't own any other
21 properties in Virginia, correct?

22 A. Right, I think so, yes.

23 Q. Right, because you had sold Brookschase in June of 2008,
24 correct?

25 A. Whatever date it was, it was in '08.

1 Q. Okay. So in November of 2008, you owned the property on
2 Old Dell Trace in Virginia but no other properties in Virginia,
3 correct?

4 A. Yes.

5 Q. And since 2008, you haven't owned any other properties in
6 Virginia, correct?

7 A. No, that's not correct. No, I'm sorry --

8 THE COURT: You have to --

9 MS. HAGER: I'll try again.

10 THE COURT: So clarify. Go ahead.

11 Q. Since November of 2008, you haven't owned any other
12 properties in Virginia?

13 A. Since 2000- -- no, I did not own any other properties in
14 Virginia.

15 Q. Yesterday and the day before, you talked a lot about the
16 various improvements that you had done to Old Dell Trace. You
17 testified that you began work at some point in 2007 and into
18 early 2008. And then, you stopped construction for a while,
19 and then you resumed when you moved in November 2008 and
20 thereafter into 2009, 2010. Do I have that timeline correct?

21 A. I have issue with the word "stopped". I believe it
22 was -- we -- it became sporadic, much less -- it wasn't
23 continuous.

24 Q. Okay. So through the early to mid-part of 2008, until
25 November of 2008, it was sporadic construction?

1 A. Yes.

2 Q. Is that right? Okay.

3 Now, in April of 2008 or thereabouts, did you seek 350,000
4 dollars from Jeffrey Krum to use for the improvements on Old
5 Dell Trace?

6 A. I don't even remember that -- that name. You mentioned it
7 once before, but I don't remember that name at all.

8 Q. Okay. I'll ask if you could turn to the Trust's Exhibit
9 II, and, specifically, within that exhibit to RFC890? And just
10 let me know when you get there.

11 A. Okay.

12 Q. And --

13 A. Okay.

14 Q. -- if you -- if you remember this is a document that we
15 talked about yesterday when Mr. Curley was testifying. This is
16 the TD Bank credit memo. You remember that from yesterday?

17 A. Yes.

18 Q. Okay. If you look at the sixth bullet point down, it says
19 the following: "Mr. Reed is currently seeking approximately
20 350,000 dollars in funds from Jeffrey S. Krum, Financial
21 Consultants, Inc., which he will use for an addition to an
22 investment property in Richmond, Virginia. Subsequent to the
23 addition, Mr. Reed plans on listing the property for sale."

24 You don't know why TD would have this statement in their
25 credit memo, do you?

1 A. No. I think we talked about this before. I didn't see
2 this in the memo, but I was asked about Mr. Krum's name before.
3 And I still don't -- I don't know -- I think I -- I think I
4 had -- had maybe testified to the fact that I recalled Mr.
5 Curley had said, look, you can look for other people, too, who
6 might lend out-of-state or something like that specifically for
7 that property. And he may have gave me some names.
8 This -- maybe this is someone he referred me to at that time.

9 But I don't recall actively going through a real process.
10 Maybe I made a call from -- I don't even remember the person,
11 but I do remember the fact that Mr. Curley said, you know,
12 there's, you know, other people, too. And that was
13 maybe -- maybe this was one of them because I do remember them
14 referring --

15 THE COURT: You're speculating, though?

16 THE WITNESS: Oh, I'm --

17 THE COURT: Are you speculating?

18 THE WITNESS: What I recall is Curley giving me a name
19 or two or something like that at the time of maybe other places
20 that I can get money as well or -- I think it was more to the
21 effect that if I wanted not to tie up all the properties, just
22 something specific for Virginia. That's the extent of my
23 memory in that regard.

24 MS. HAGER: I move to strike those portions of his
25 answer which were hearsay. There were a couple of times he

1 said what Mr. Curley said.

2 THE COURT: Overruled. They're not offered for the
3 truth.

4 Q. Okay. So you testified in your deposition -- and I
5 believe in your direct exam as well -- about when you moved
6 down to Old Dell Trace from Matlack in November of 2008 that
7 you discovered some property damage, right?

8 A. Correct.

9 Q. And you showed us some photos in your Exhibit 44 that show
10 that damage; is that right? And please feel free to refer to
11 your Exhibit 44 to make sure I have the right exhibit. It's
12 right in front of you.

13 A. Oh, okay. Correct.

14 Q. Okay. So each of the pictures in Exhibit 44 you took at
15 the time that you saw the damage to the property when you
16 arrived in November of 2008, correct?

17 A. Yes, I believe that's correct.

18 Q. Okay. And that damage was covered by insurance; is that
19 right?

20 A. Correct.

21 Q. You testified yesterday that some of what the insurance
22 company paid was to pay for your hotel bill; is that correct?

23 A. Correct.

24 Q. Is it your testimony that whatever the amount was that the
25 insurance paid it was enough to cover the hotel, roof repair,

1 the dry wall repair, and the repair to the stairs; is that
2 right?

3 A. No, because I didn't have all the receipts. I couldn't
4 separate out all the receipts, so we settled on an amount. So
5 there was --

6 Q. Okay.

7 A. It covered the hotel, and then it -- and there was some
8 funds towards the construction, because I couldn't identify the
9 difference -- they were going to argue about, you know, what
10 was the dry waller's -- how much was the dry waller's bill was
11 just for that section, because this is dry wall, because I was
12 using for the whole house. And, you know, what was that much,
13 so, you know, I think the adjuster came up with a formula for
14 some -- in his records for some kind of a square footage, and
15 he says, and will you accept this number. And you know,
16 I -- that's what we wound up doing.

17 Q. And at the time of the damage, you hadn't yet done work on
18 the stairs, correct?

19 A. At the time of the damage, I had not done -- no.

20 Q. Am I right that at the time of the damage you hadn't yet
21 done any renovations to the stairs?

22 A. Correct.

23 Q. Okay. So the last work that was done by a contractor on
24 the Old Dell Trace property was when?

25 (Pause)

1 A. The last guy, I think, was the heating and conditioning
2 guy. I'm trying to remember when that work was done.

3 Maybe -- I don't know, September or October -- I don't
4 know -- of '08, something like that. I --

5 Q. September of (sic) October of '08? Was that your answer?

6 A. Yeah, I think so.

7 Q. Okay. So then, there was more work done, though? You
8 moved in at the end of '08. You testified yesterday that you
9 did more work at the end of '08 and throughout '09, didn't you?

10 A. Yes.

11 Q. Okay. So -- and ultimately, you then moved out and moved
12 back to Matlack, correct?

13 A. Correct.

14 Q. Okay. So at the end of the day, you had a lot of
15 renovations that you testified about. What was the very last
16 work that was done, and when was it done?

17 A. I think there was some plumbing work done after I moved
18 out, and I don't remember. Something was -- I think we had a
19 problem with a line that ran up to the third floor through the
20 kitchen. I'm trying to remember, I think it's -- I think it
21 was -- I'm pretty sure that was done after the -- after I moved
22 out.

23 Q. Okay, so you moved out in May of 2010, correct; do I have
24 that date right?

25 A. No, I thought we moved out in -- I thought we moved out in

1 November.

2 Q. I might have that wrong. Okay, so you moved from Old Dell
3 Trace to Matlack in November of 2010?

4 A. Maybe, I think so.

5 Q. Okay, and I think you're right, I'm sorry; that was my
6 mistake.

7 A. Sure.

8 Q. And after that, you had some minimal work done that was
9 plumbing work; is that right?

10 A. Yeah, there might have been something done to the basement
11 or the garage, too, I'm trying to -- I'm trying -- I'm trying
12 to remember.

13 THE COURT: Just clarify, when do you think you moved
14 back to New Jersey?

15 MR. REED: I think, Your Honor -- I think it was -- I
16 think it was, again, in November. I think --

17 THE COURT: So it was after you finally got Cooper out
18 of the house?

19 THE WITNESS: Yeah.

20 BY MS. HAGER:

21 Q. So you used cash on hand to start the renovations at Old
22 Dell Trace, correct?

23 A. Yes.

24 Q. And that cash on hand was primarily from the sale of other
25 properties; is that right?

1 A. I -- I mean, I had some -- I had some savings, I -- you
2 know, and there was cash from rental properties, I had gotten
3 some money from a patent that I had, there was some -- some
4 money down on that. I don't remember if my wife had gotten
5 some money from selling some stuff that she was involved in
6 with some artwork and stuff like that, but I -- I can't
7 remember the exact, but maybe the big chunk of it -- the
8 biggest chunk, that was in reserve was some, you know,
9 properties and things like that, but it wasn't like the -- I
10 mean, there was other money, too.

11 Q. Okay. And you testified in one of your depositions that
12 the money for the renovation originally was supposed to come
13 from the sale of the Matlack property; do you recall that
14 testimony?

15 A. I don't know what the word -- I don't the word
16 "originally", I mean, I -- at a -- at a -- I know for certain
17 at a certain point, there was money that I thought was going to
18 come from the Matlack property, but you know, there was, you
19 know, money -- money that I had, there was money that I was
20 expecting from other -- other things that we were working on,
21 and so I can't -- I don't know where the word "originally"
22 starts with, and -- and I don't know if I used that word
23 "originally" with intent, or -- or, you know, at that moment.

24 I mean, my long-term plan, you know, is always -- you
25 know, there's rule, capital -- there's a rule that I -- you

1 know, that I was taught in college --

2 Q. Okay, I --

3 A. -- capital money is for capital projects. You know, and
4 short-term money or income is for, you know, living. So you
5 know, in my mind, they -- they flow, but if there's a dip you
6 fund it with -- with other things.

7 Q. Okay, so before any work started on Old Dell Trace, you
8 had plans and you had a list of all the work and estimates for
9 how much it would cost by line item, and you had an overall
10 cost; is that right?

11 A. I mean, I had plans. I mean, there was no -- there was
12 no -- you know, I had in my mind -- I mean, it's not like I had
13 a physical list.

14 Q. So isn't it typical to know the total cost of a project
15 ahead of time so that you can evaluate whether you'll be able
16 to cover your investment and make a profit?

17 A. I -- I have estimates in my mind when I look at them, and
18 then I compare them to the final -- the final end, you know, in
19 my mind. I think I testified to my margins in my mind -- you
20 know, in my past projects even vary.

21 Q. Okay.

22 A. So --

23 Q. Thank you, I didn't mean -- go ahead if you weren't done;
24 sorry.

25 A. No, it's all right.

1 Q. So as you sit here, do you remember what your total was in
2 your mind of how much the work would start -- sorry, let me
3 strike that.

4 Before you started any of the work, what was the number
5 that you had in your mind of how much all the work was going to
6 cost in total?

7 A. It -- it depended on which direction I was going to go.
8 That's why I had the appraisal done in '08 when we framed it
9 because, you know, the cost for the project could -- could take
10 a turn left or right, depending on what you're going to put
11 into the project. I use the kitchen for an example; it's
12 80,000 dollars, 70,000 or 120,000 dollars, and is that money
13 going to generate return or not. And that's something you look
14 at, you know, what -- in compared to what you think the market
15 price is going to be --

16 Q. Okay.

17 A. -- so I don't know, 2- or 300,000 dollars; something like
18 that.

19 Q. So you thought, before you got started on the work that
20 all the work in its entirety would cost somewhere in the
21 neighborhood of 2- to 300,000 dollars; is that right?

22 A. I mean, it could be a little bit low, too, if we went
23 with, you know -- you know, less --

24 Q. Okay.

25 A. -- you know, expansion; that kind of thing. But -- but

1 that's -- you know, that's -- you had to make a decision at a
2 certain rate points what you're -- what you're going to
3 continue to do.

4 Q. So yesterday you talked about the funds that you paid to
5 various contractors, the funds that you were invoiced for and
6 didn't pay, and then you also talked about a category of work
7 that had not been completed; do you remember that?

8 A. Yes.

9 Q. Okay, and the work that you talked about that still
10 remained was two items in the master, the kitchen, and four
11 different items in the sunroom; do you remember that?

12 A. Yes.

13 Q. And you testified that you couldn't sell the property
14 because you couldn't get a CO, right?

15 A. Yes.

16 Q. And you couldn't get a CO because the kitchen was
17 incomplete, right?

18 A. Yes.

19 Q. All right, and --

20 A. Well, not only a -- no, not only the kitchen.

21 Q. What else?

22 A. Well, as I testified, and -- and as -- and as my
23 experience to be a fact, is even a bare underlayment floor will
24 prevent you from getting a CO. And we had unfinished -- and I
25 don't mean unpainted, I mean, subflooring exposed in -- in

1 multiple rooms; we had unfinished rooms. The sunroom was an
2 unfinished space in its entirety, it only had the framing
3 lumber.

4 Q. Okay, but we're still just talking about unfinished space
5 in the sunroom and in the master; you're not now talking about
6 other rooms, right? It was just those other two rooms that
7 weren't finished?

8 A. Right, and I think I -- I may have --

9 Q. And we have -- I'm sorry.

10 A. Go ahead.

11 Q. Go ahead.

12 A. I may have mentioned that -- if I didn't, it's my
13 mistake -- there was a part of the basement had -- had been
14 taken apart for the -- for the bathroom, and that -- that was
15 under the staircase where the -- you know, in the main -- in
16 the main foyer. So that was -- you know, that in itself would
17 have prevented the CO because it was -- you know, that was
18 disassembled to the point -- so there were multiple areas that
19 would have prevented us from getting a CO, no question about
20 it.

21 Q. And before you demoed the kitchen, the property had a
22 functioning kitchen, correct?

23 A. When we -- when I purchased the property it got a CO and
24 had a functioning kitchen. And -- and I guess, my hesitancy
25 is, the demo of the kitchen took place in -- in two parts.

1 There was in -- in the -- the first phase, they took -- they
2 ripped out the -- the -- you know, our -- you know, again,
3 being -- trying to be cautious about things as we progressed,
4 we ripped out the -- you know, the appliances, and the sinks,
5 but left the cabinets and the -- you know, the floor and the
6 ceiling and stuff like that. But the -- but the dishwasher
7 was -- we -- the dishwasher and the cabinetry section for the
8 dishwasher, which was next to the sink -- we removed the sinks
9 because they were -- they were dated, but that was -- that was
10 before -- that was -- that was before we moved in; that was in
11 like -- that was in -- that's when we were doing the main
12 demolition work. Oh, my God, that was probably in the end of
13 '07 or something like that. And that -- if we're
14 talking -- you're asking me about the CO, we --

15 Q. No, I didn't, I asked you before you demoed the kitchen,
16 the property had a functioning kitchen, correct? That's all I
17 asked you.

18 A. Yes, and my response -- I'm sorry, my response to the demo
19 was the demo took place in two parts: it -- you know, the
20 original demolition, the first phase of it was in '07 --

21 THE COURT: When you bought the house, it had a
22 functioning kitchen?

23 THE WITNESS: Yes.

24 Q. And you remember your testimony and your deposition where
25 you said you decided to take out the kitchen after you got the

1 money from Brett Cooper in November of 2008?

2 A. Yes, and that -- that refers to -- you know, to taking out
3 the remainder of the cabinets and -- and deciding to change out
4 the floor.

5 Q. And you decided to go ahead with that work in the kitchen
6 in reliance on receiving the rental payments for Mr. Cooper
7 that were called for in his lease-purchase agreement, right?

8 A. Oh, one of the -- that was -- that's why I felt -- let's
9 see, that was in -- that would be -- at that --

10 THE COURT: May I make a suggestion, Mr. Reed? We'll
11 move faster, to the extent she asked a very specific question,
12 and you need to answer the question, shorter is often better
13 than longer. If you can answer the question yes or no, you
14 should try to do that. I'm not preventing you from where
15 necessary, to give an explanation, but this is not intended as
16 a conversation.

17 MR. REED: Okay.

18 THE COURT: Okay. I just -- so just try and do that:
19 Listen to the question carefully and see if you can just answer
20 the question, if Ms. Hager has a follow-up question she wants,
21 she'll ask that, okay.

22 Go ahead, Ms. Hager. Just -- it'll move along a lot
23 faster.

24 MR. REED: Okay.

25 THE COURT: Thank you.

1 I didn't want to throw you off stride, Ms. Hager.

2 Q. If I could refer you to your deposition transcript from
3 May 9th, 2016, which is tab 5 in the deposition binder.

4 A. I'm sorry, say that -- tab 5?

5 Q. Right, it's your deposition transcript from May 9th of
6 2016.

7 A. Okay.

8 Q. Page 77, starting at line 5 going until line 9, question:
9 "When did you take the kitchen out?"

10 Answer: "When Brett Cooper signed the six month lease
11 extension in the beginning of 2000 --

12 "When did he do that?

13 "It's either the end of '08 or the beginning of '09."

14 So was the answer that you gave that I just read, a
15 correct statement?

16 A. No, and that's why I tried to clarify it because
17 it's -- it was in two -- two parts, the kitchen.

18 That -- that's --

19 Q. So your deposition testimony was inaccurate?

20 A. I don't think it was detailed enough.

21 Q. So how much did you spend on the kitchen demolition?

22 A. Demolition. I --

23 Q. Do you know?

24 A. I don't know how to cut the guy's -- the laborer's hours
25 out.

1 Q. Okay, so you have a -- you know how much you spent on demo
2 all together, but you don't know what specificity for the
3 kitchen, right?

4 A. I -- I'd have to really think about demo overall because
5 it occurred over --

6 Q. Okay, I withdraw that question.

7 Did you put in new floors in the kitchen?

8 A. Yes.

9 Q. Did you put in plumbing in the kitchen?

10 A. Yes.

11 Q. And you put in lighting, correct?

12 A. Yes.

13 Q. And you put in drywall?

14 A. Yes.

15 Q. And it was painted, correct?

16 A. Yes.

17 Q. And you testified yesterday that all you had remaining to
18 do was install the appliances and the countertops and finish
19 the cabinets, I believe; is that correct?

20 A. Well, there's -- it was only roughed in plumbing and
21 electric, you had to do all that connect -- connection, as
22 well, too, just so you understand the scope of that.

23 Q. Okay, anything else besides connecting up the plumbing,
24 adding the countertops, adding the appliances, and finishing
25 the cabinets?

REED - CROSS

44

1 MR. REED: I want to -- I want to refer to a
2 photograph, Your Honor, in my book.

3 THE COURT: Can you answer Ms. Hager's question?

4 MR. REED: I can't remember. I think that's probably
5 it because that's -- that's in the picture, I think that's,
6 too.

7 Q. And it's your testimony that those items would have cost
8 between 80 and 100,000 dollars?

9 A. U.S. high is 120.

10 Q. As of March of 2008, would you agree with me that the work
11 on Old Dell Trace was more than halfway finished?

12 A. I can't agree with that, work --

13 Q. Would you --

14 A. Go ahead.

15 Q. Would you agree that your appraiser indicated that in
16 March of 2008, the property was sixty percent renovated?

17 A. Is that a finance -- see, that's -- the -- it's not
18 a -- it's a question of financial --

19 THE COURT: Do you agree or not?

20 MR. REED: I don't know that. I don't know if it's a
21 financial statement, or if it's a physical work statement.

22 THE COURT: All right, next --

23 MR. REED: I mean, you can spend a lot of money on
24 this --

25 THE COURT: Next question.

REED - CROSS

45

1 MR. REED: -- a small space.

2 THE COURT: Next question.

3 (Pause)

4 Q. If you could turn to tab 19 in your exhibit book.

5 A. Page 9.

6 Q. It's page 2 of 18, the first page of Mr. Uminski's
7 appraisal.

8 THE COURT: All right.

9 Q. Do you have that page --

10 A. I do.

11 Q. -- Mr. Reed? Okay, in the bottom section in the black bar
12 on the left-hand side says "improvements" about midway, it
13 says, "description of the condition of the property -- and I'm
14 skipping what's in parenthesis -- the subject is a very well-
15 constructed colonial style dwelling that has recently been
16 renovated, and had a rear addition added. As of the date of
17 inspection, construction was approximately sixty percent."

18 Do you agree with that?

19 A. I -- I can't disagree with the statement.

20 MR. REED: Should I -- Your Honor, I'd like to --

21 THE COURT: You answered; next question.

22 MR. REED: Can I make a note, Your Honor, maybe I
23 could make this simpler, can I make a note for the costs? I'm
24 not going to remember for the redirect or whatever you call
25 it --

REED - CROSS

46

1 THE COURT: Yes, you can go ahead and make notes.

2 MR. REED: That -- that may help me.

3 THE COURT: You bet, go ahead and make notes.

4 MR. REED: All right.

5 THE COURT: Move along.

6 Q. So if you turn to the next page, page 3 of 18 at the very
7 bottom --

8 A. Wait, I'm sorry, give me a second.

9 THE COURT: Ask your question, Ms. Hager.

10 MR. REED: Okay.

11 Q. At -- at the very bottom of page 3 of 18 in the
12 reconciliation section, the appraiser provides a value of
13 1,725,000 dollars as of March 18th, 2008; do you see that?

14 A. Yes.

15 Q. And then it goes on to say, "which is the date of
16 inspection, and the effective date of this appraisal," do you
17 see that?

18 A. Yes.

19 Q. So would you agree with me that your appraiser says that
20 as of March 18th, 2008, the property renovations were
21 approximately sixty percent complete?

22 THE COURT: I see what it says, just the
23 document -- documents don't speak, but it's clear what the
24 document says. The deposition and the exhibits are in
25 evidence; next question.

1 Q. You testified on Tuesday that you worked at Smith Barney
2 for a while; do you remember that testimony?

3 A. Yes.

4 Q. And in fact, you worked there approximately four to six
5 weeks; isn't that more accurate?

6 A. That's -- that is correct.

7 Q. Okay. In March of 2008, you started working at Smith
8 Barney as a financial advisor, correct?

9 A. Yes.

10 Q. And that's located in Marlton, New Jersey; is that right?

11 A. Mount Laurel, I think.

12 Q. Mount Laurel, okay. And when you started, you were
13 earning a base salary of 65,000 dollars, correct?

14 A. With -- with -- with a -- with a contract for bonuses that
15 would be done based on the -- the -- the -- the -- the -- my
16 performance, also bonuses for the office's performance, and
17 bonuses for the region's performance.

18 Q. And you were, at the time, studying for your Series 7
19 license, correct?

20 A. Yes.

21 Q. And you needed that in order to be able to sell the
22 financial products, correct?

23 A. Yes, and my component of my bonuses would be conditioned
24 upon that, but the -- the other portions, which would be
25 this -- this office and the -- and the region or the market or

1 whatever they call it, would not.

2 Q. And you ceased employment with Smith Barney when you fell
3 at a work function at a Chance Restaurant in April of 2008,
4 correct?

5 A. Correct.

6 Q. And you sued Chance Restaurant, correct?

7 A. Correct.

8 Q. And you settled with them, ultimately, correct?

9 A. Correct.

10 Q. And when was that settlement?

11 A. I don't remember.

12 Q. Was it in 2009?

13 A. No. No. No.

14 Q. Was it in 2010?

15 A. I -- I thought it was in 2012.

16 Q. And what was the amount of the settlement?

17 A. That's under seal.

18 THE COURT: And you still have to tell it; you're in
19 court, you're testifying, you answer the question.

20 A. I think it was 4- something.

21 THE COURT: 4 what?

22 MR. REED: 400,000 something.

23 Q. The date that you fell is the same date as your disability
24 started, correct?

25 A. Yes.

1 Q. The income that you currently receive is disability
2 payments through the federal government; is that correct?

3 A. Yes.

4 Q. All right, now, you made a claim for long-term disability
5 through Citigroup, which was -- which had determined that you
6 were eligible for benefits; is that correct?

7 A. Correct.

8 Q. and MetLife was the plan administrator of the Citibank
9 disability plan, correct?

10 A. Yes.

11 Q. And MetLife initially paid you 3,250 dollars per month
12 based on an income of 65,000 dollars a year, which was your
13 base salary, right?

14 A. Yes.

15 Q. And you then informed MetLife in February of 2009 that
16 your salary was actually 265,000, correct?

17 A. I -- I did not, the HR department informed them that that
18 was my total compensation agreed to going forward in a package
19 with -- with Smith Barney.

20 Q. Okay, and MetLife indicated in September of 2008 that your
21 benefits were approved through July of 2013, correct?

22 A. I can't remember.

23 Q. Okay. And MetLife indicated in March of 2009 that your
24 benefits were approved through October 30th, 2031, correct?

25 A. Again, I can't remember that.

1 Q. Okay. MetLife later terminated all benefits on November
2 3rd, 2009, and you appealed that decision and subsequently sued
3 Citigroup and MetLife, correct?

4 A. Yes.

5 Q. Is it true that after you received the approval of the
6 long-term disability benefits that you purchased a home in
7 Virginia, moved there, and undertook extensive renovations?

8 A. I'm sorry, say that again?

9 Q. Sure. Is it true that after you received the approval for
10 your long-term disability benefits that you purchased a home in
11 Virginia, moved there, and undertook extensive renovations?

12 A. Yes.

13 Q. When did you receive approval of your long-term disability
14 benefits?

15 A. I believe it was in September or October, but it wasn't --

16 THE COURT: Of which year?

17 MR. REED: Of -- of '08.

18 Q. Now, you already owned your home at Old Dell Trace in
19 2008, correct?

20 A. Yes.

21 Q. So what home was it that you purchased after you got
22 approval of your long-term disability benefits?

23 A. I don't understand, what -- what -- what --

24 Q. Well, I'll do something in a minute that will clarify; if
25 you don't know the answer I'll just move on.

1 THE COURT: Can you answer the question?

2 State your question again, Ms. Hager, and then listen
3 carefully and then answer.

4 MS. HAGER: Sure.

5 Q. So is it true that after you received approval of your
6 long-term disability benefits, you purchased a home in
7 Virginia, moved there, and undertook extensive renovations?

8 A. Purchased -- no, I didn't purchase at that time. We
9 purchased Old Dell Trace was purchased before.

10 Q. Okay. And is it true that after you received the
11 termination of benefits, you could no longer afford to fund the
12 renovations or payments, and the house went into foreclosure?

13 A. Like, say that again, let me hear --

14 Q. Sure. Is it true that after you received the termination
15 of benefits that you could no longer afford to fund the
16 renovation or the payments, and the house went into
17 foreclosure?

18 A. It -- it had an effect, yes.

19 THE COURT: Can you answer the question, yes or no?

20 MR. REED: It was one of --

21 THE COURT: It's a very clear question. You can -- if
22 you -- can you answer it yes or no?

23 MR. REED: Okay, say the question again?

24 Q. Sure. Is it true that after you received the termination
25 of benefits, you could no longer afford to fund the renovations

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52

1 or payments, and the house went into foreclosure?

2 THE COURT: Do you have a deposition reference, Ms.
3 Hager?

4 A. Yeah.

5 MS. HAGER: I don't, but I do have some other
6 materials.

7 THE COURT: All right. Mr. Reed, let's stop fencing;
8 it's a clear question, can you answer it, yes or not?

9 MR. REED: Yes, I started --

10 THE COURT: All right, you've answered the question;
11 next question.

12 Q. Do you recall your declaration in support of your summary
13 judgment motion in the Reed v. Citigroup case?

14 A. No.

15 Q. Okay, I'd ask you to turn to Exhibit C.

16 A. C.

17 (Phone ringing)

18 MR. REED: Oh, geez.

19 Q. Let me know when you have that.

20 A. Got it.

21 Q. Okay, Exhibit C is plaintiff's motion for summary judgment
22 in a case styled Frank Reed v. Citigroup, Inc.; it was filed in
23 the United States District Court for the District of New
24 Jersey, civil action 12-2934. If you could turn to
25 page -- it's Bates stamp RFC-561; it looks like a few of the

1 pages don't have the Bates stamp, but it's the page immediately
2 before 562, and it has paragraphs 10, 11, 12, 13, 14, 15 on it.
3 Do you see where I am?

4 A. Okay.

5 Q. And actually for completeness, I guess we should turn back
6 two pages, which would be RFC-559 entitled "declaration of
7 Frank Reed in support of plaintiff's motion for summary
8 judgment"; do you see that?

9 A. Yes.

10 Q. Okay. And so this is a declaration that you gave in
11 support of your summary judgment motion in the Reed v.
12 Citigroup case, correct?

13 A. Okay, yes.

14 Q. All right, and the Reed v. Citigroup case was your case
15 against Citigroup for payment of your disability benefits; is
16 that right?

17 A. Yes.

18 Q. And you were represented by a lawyer, John Mann, correct?

19 A. Yes.

20 Q. Okay. So now, if we look -- well, let's go back -- we'll
21 look on RFC-560 to clarify the dates because you said you
22 weren't sure of those. Paragraph 6, you said: "In viewing the
23 MetLife website and the information it contained about my
24 claim, I observed the ongoing activity, and MetLife produced
25 information relevant to my long-term disability benefits, which

1 MetLife had approved for me. This included an entry made by
2 MetLife on September 29th, 2008, stating that my long-term
3 disability benefits were 'approved through' July 9th, 2013.
4 This also included an entry made by MetLife on March 23rd,
5 2009, stating that my long-term disability benefits were
6 'approved through' October 30th, 2013 (sic), the date of my
7 65th birthday."

8 Does that refresh your recollection as to the dates that
9 your benefits were approved?

10 A. Yeah, sure, that -- if that's what I -- well, it was
11 probably taken -- my lawyer probably took them from the file.

12 Q. Okay, so then if you turn the page to RFC-561, is that
13 your signature at the bottom?

14 A. Yes.

15 Q. Okay. Paragraph 12 states as follows: "In reliance on
16 MetLife's indications that my benefits were 'approved through'
17 July 9th, 2013, and then October 30th, 2031, I undertook
18 certain actions, including moving my family to Virginia and
19 purchasing a home there. I also undertook extensive
20 renovations of the home, and spent through my savings and cash
21 reserves to accomplish the move, the purchase, and to initiate
22 the restoration and renovation work."

23 Is paragraph 12 an accurate statement?

24 A. The only -- the only thing I think I would say is in
25 between "in" and "reliance", it was "partial reliance", but

1 yes.

2 Q. You go on in paragraph 13 to say: "Notwithstanding its
3 numerous affirmative indications to the contrary, MetLife"
4 determined my long-term disability -- excuse me -- "terminated
5 my long-term disability benefits on November 3rd, 2009."

6 Paragraph 14: "As a result, I could no longer afford the
7 payments for the Virginia home and could not complete the
8 renovation work. My family and I were forced to leave the
9 Virginia home, which was lost to foreclosure."

10 Paragraph 15: "But for MetLife's approval of my long-term
11 disability benefits through July 9th, 2013, and then October
12 30th, 2031, I would not have uprooted my family or taken on the
13 financial burden of a home purchase and significant home repair
14 and renovation work."

15 Is it true that you purchased a home in Virginia after you
16 started receiving disability payments?

17 A. No, that's incorrectly phrased.

18 Q. All right, did you mislead the court as to your reliance
19 on the long-term disability payments?

20 A. For the repair and the -- at that time, and the -- and the
21 work, no because it was new -- it was -- it was -- it was
22 a -- of course, a cash flow that I -- I thought was coming in
23 and would be using.

24 THE COURT: Is the reference of this declaration to
25 the Old Dell Trace property?

1 MR. REED: Yeah. Yeah.

2 THE COURT: Okay, next question.

3 Q. And you indicate in the declaration that you made to the
4 District Court that you wouldn't have undertaken any of the
5 renovations had you not received approval of your disability
6 benefits; is that right?

7 A. Undertaken, this is where it's bad; they were underway and
8 I would not have embraced them, you know -- you know,
9 if -- so -- you know, so strongly, and you know, it would've
10 been more cautiously proceeding like it -- like it was. I
11 mean, you know, every time I thought we were -- we -- you know,
12 we -- I thought we had an original plan; that -- then fall,
13 then the next, then the next, then the next. So
14 it's -- it's -- it's -- I don't know how to explain that right
15 now.

16 Q. Okay, so you attributed the foreclosure on Old Dell Trace
17 to the termination of benefits; is that right?

18 A. Well, it's -- it's one of the reasons why I
19 couldn't -- I -- I -- I could not -- I --

20 Q. Well, in paragraph 14 on page 561, you did, right? You
21 told the court, "my family and I were forced to leave the
22 Virginia home, which was lost to foreclosure." You made that
23 statement, right, under --

24 A. Yeah, but see, at --

25 Q. -- penalty of perjury?

1 A. -- at the -- at the ultimate end, I think that was the
2 last income that I was getting, and then that was -- that was
3 the end of -- you know, that -- when -- when we no longer were
4 getting our financing, you know, I had cash on hand, Cooper
5 stopped paying. The last line of cash that I had, Your Honor,
6 was the -- you know, the -- the disability payments, so we had
7 our cash on hand in the beginning, then the financing that
8 we -- we thought we would get didn't happen. We got some money
9 from Cooper; Cooper stopped paying, and then -- I don't know if
10 you recall that from -- you know -- you know, he put money down
11 to get me to move out of the house, and the combination of him
12 putting money down and being approved for MetLife, was able to
13 convince my wife, okay, let's -- let's move down
14 and -- and -- and move forward with this, you know, project.

15 You know, we didn't get the -- I think it's -- the house
16 didn't sell immediately; that fell through. Then we didn't get
17 our financing, but then, you know, I've been approved for
18 my -- my -- my benefits, and it looks like it's been approved
19 stably. Cooper has now come to the table with some money, then
20 Cooper came up with some rent money, and so, you know, we
21 decided, let's move.

22 Then Cooper stops paying me the rent, even though we did
23 an extension. Then I was still getting my disability payments,
24 which I'm using to service -- not just money that I had from
25 savings, then Cooper, and you know, because money is fungible.

1 Then -- then MetLife's payments are, also -- and then finally,
2 it dwindle down; all the lump sum money is gone, and I'm
3 using -- I'm left using my -- my disability payments, you know,
4 for that. And then when they terminate it, all right,
5 there's -- that's it, I am -- I'm at the end of the alley, at
6 the brick wall; there's nothing more to do it.

7 So do I list all of that stuff, that history, in here?
8 That's the last thing; they were a -- you know, a reason. They
9 are -- if they kept paying me, they paid me enough to keep
10 going even after I hit -- I hit my financing after this, I kept
11 on finding money to keep going. But you know, it's like Jenga,
12 you know, you keep pulling out -- out the rug. This -- and you
13 can say, okay, well, if you got money from this place, or if
14 you got money from that place, we're only one of the bricks in
15 the wall why he didn't finish this project. MetLife is one of
16 those reasons why I couldn't finish the project.

17 MS. HAGER: Move to strike as nonresponsive.

18 THE COURT: Oh, I'm going to let it stand. Go on.

19 Q. Nevertheless, you represented to the New Jersey District
20 Court that you lost your house in Virginia to foreclosure
21 because of MetLife's actions, correct?

22 A. Ultimately, that was one of -- or that was one of the
23 reasons why I did, yes.

24 Q. Okay, and you attributed your inability to complete the
25 renovation to the termination of benefits, as well, correct?

1 A. I'm sorry, say that question?

2 Q. You attributed your inability to complete the renovation
3 on the termination of benefits, correct?

4 A. At that stage, yes.

5 Q. And now in your case against the trust, you're attributing
6 these things to the trust, correct?

7 A. Yes, because if I had obtained sources of funds from those
8 alternatives, it wouldn't even matter if MetLife terminated me,
9 I would've been able to complete it.

10 Q. Okay. So if you turn to --

11 THE COURT: Are you offering this exhibit into
12 evidence?

13 MS. HAGER: Yes, I will, I do have something further
14 in the exhibit, though.

15 THE COURT: That's fine.

16 Q. Starting at RFC page 571, same exhibit, Exhibit C, is
17 plaintiff's memorandum of law in support of motion for summary
18 judgment, and so if I could direct your attention to RFC-610,
19 which is page 40 of your summary judgment motion.

20 A. Which -- I'm sorry, which one is it?

21 Q. It's Exhibit C --

22 A. C, um-hum.

23 Q. -- RFC-610 --

24 A. Okay.

25 Q. -- which is page 40 of your summary judgment motions.

1 A. Okay.

2 Q. The first full paragraph: "As a result of MetLife's
3 affirmative indications that Reed's benefits were 'approved
4 through' July 9th, 2013, and then October 30th, 2031, Reed
5 changed his economic position, including moving his family to
6 Virginia and undertaking extensive renovation of a home there.
7 Indeed, but for MetLife's affirmative indication that Reed
8 would have received long-term disability benefits through July
9 9th, 2013, and then October 30th, 2031, he would not have
10 uprooted his family or taken on the financial burden of
11 significant home repair and renovation."

12 A. At that --

13 Q. Do you agree or disagree with that paragraph?

14 A. Yeah, I agree at that time, it's correct, I was in -- in a
15 holding mode.

16 Q. So the court denied your summary judgment motion, and you
17 appealed to the Third Circuit, correct?

18 A. Yes.

19 MS. HAGER: Okay, so Your Honor, I'd like to offer
20 Exhibit C into evidence.

21 THE COURT: Exhibit C is in evidence.

22 (Plaintiff's memorandum of law in support of motion for summary
23 judgment in case of Reed v. Citigroup, Inc. was hereby received
24 into evidence as Trust's Exhibit C, as of this date.)

25 Q. So if you could now turn to Exhibit F, and let me know

1 when you're there.

2 A. I'm there.

3 Q. Okay, so Exhibit F is your submission to the Third
4 Circuit; do you recognize this?

5 A. Yes.

6 Q. Okay, and this was submitted January 21st, 2016, correct?

7 A. Yes.

8 Q. And you're pro se in the appeal, right?

9 A. Yes.

10 Q. Okay, if you turn to RFC-1610, let me know when you're
11 there.

12 A. I'm there.

13 Q. For the fourth full paragraph reads as follows: "So it is
14 with understanding that I am viewed by the plan administrator
15 and all my physicians as permanently and irreversibly impaired,
16 and that" I have my LTD -- excuse me -- "and that my LTD have
17 been correspondingly approved for as long as they can be done
18 so that I move my family and spend through my nest egg to
19 renovate a comparably sized home for me, my wife, and my five
20 kids, but in a less expensive area, as I was now going to be
21 only receiving my LTD benefits, not what I was earning before.
22 This was relied upon to my severe detriment."

23 So you wrote that paragraph, didn't you?

24 A. Yes.

25 Q. And you wrote it as recently as the beginning part of

1 2016, correct?

2 A. Yes.

3 Q. And you agree with what you said in that paragraph?

4 A. Yeah, at that time, that's the -- right, that's -- at that
5 time what that, right.

6 Q. And when you say "at that time", what time? At the time
7 you wrote this or at the time in 2009 -- excuse me, 2008?

8 A. Well, in -- in '08 when I -- when I -- when -- after I was
9 approved, it -- it -- we thought that cash -- that that was the
10 cash flow that was now coming forward, like, that we would
11 be -- that we -- that I would -- I would be getting.

12 Q. So you wouldn't have moved out of -- according to what
13 you're saying to the court in the Third Circuit papers and in
14 the District Court papers, you wouldn't have moved from the
15 Matlack property into the Old Dell Trace property if you hadn't
16 been approved for long-term disability benefits, correct?

17 A. I'm -- that and Cooper, those were the reasons that
18 I -- that I -- that I moved to Virginia. That -- those two
19 combined things because I was approved first, and I didn't move
20 out of the house, you know, I was approved in, like, September.
21 I didn't say, I'm approved, let's move with --

22 Q. Right.

23 A. -- you know, the Beverly Hillbillies, it was that plus
24 Cooper coming to the table that made -- that wound up making
25 us.

1 Q. Okay. Do you think it was misleading to state to the
2 court under penalty of perjury that you moved out of Matlack in
3 reliance on the disability payments?

4 A. No, because they were -- they -- they were combined, that
5 was --

6 Q. Okay.

7 A. -- it was a combination reason. I mean, I don't know if I
8 should have put in Cooper, too, but you know, I remember
9 discussing with my wife about it, it's like, okay, it's not
10 just this lump sum, what if Cooper fails, what are we going to
11 do then, you know, because he's -- he already missed the
12 settlement; what do we do then? Okay, well, it looks like this
13 is better because we've got -- you know, it's more stable, it's
14 been, you know, approved.

15 Q. Okay, so if you turn to RFC-1611, the last paragraph, you
16 say: "It must also be said that I lost my house to foreclosure
17 and my entire life savings with it, as I was not able to either
18 complete the renovations on the house we moved to, or continue
19 making the mortgage payments because" -- and that's in capital
20 letters -- "the plan administrator wrongfully ceased my
21 payments after leading me to believe that they would continue."

22 A. Right, because the payments, if they had continued the
23 payments --

24 MS. HAGER: Okay, I move to strike because I hadn't
25 asked the question yet.

1 MR. REED: Oh, I'm sorry.

2 THE COURT: Repeat your question again.

3 MS. HAGER: Yeah, I hadn't asked one yet.

4 Q. So I read in that paragraph, and then my question is, in
5 that statement that you made to the Third Circuit, you
6 indicated that you lost your house to foreclosure, and your
7 entire life savings because you couldn't complete renovations
8 on the house, or make mortgage payments because of the denial
9 of your benefits, correct?

10 A. That was the last source of income that I had, and when
11 it -- when it disappeared, that was the natural conclusion of
12 what happened to me.

13 MS. HAGER: Okay, Your Honor, I move to admit Exhibit
14 F.

15 THE COURT: Exhibit F is in evidence.
16 (Appeal to Third Circuit Court for Reed v. Citigroup, Inc. was
17 hereby received into evidence as Trust's Exhibit F, as of this
18 date.)

19 Q. There came a time when you and your wife stopped making
20 payments on the Taylor, Bean & Whitaker on the Virginia
21 property, correct?

22 A. I think there were two times.

23 Q. Okay. And you stopped making those payments because you
24 ran out of cash, correct?

25 A. I don't remember -- I don't remember what the

1 circumstances were.

2 Q. And you made a choice -- an affirmative choice -- to stop
3 paying Taylor, Bean & Whitaker, correct?

4 A. At the end, it would've been -- it would've been no
5 choice.

6 THE COURT: I don't understand your answer.

7 MR. REED: The -- the -- go back to the MetLife line
8 of revenue, so I moved down there, I no longer get the money
9 from Cooper, and I now have run out of money from MetLife. How
10 do I pay -- how do I make a payment? I mean, I get Social
11 Security Disability, but how do I make the --

12 THE COURT: Okay, ask your next question, Ms. Hager.

13 MR. REED: It physically wasn't there.

14 Q. Do you remember your testimony from your recent deposition
15 where I asked you why the loan went into default and you told
16 me it was because you ran out of cash?

17 A. I think that's what I'm saying here, right?

18 Q. And then you went on to say -- well, let me -- this is the
19 deposition transcript from May 9th, 2016, which is tab 5 in the
20 binder.

21 A. 20 -- tab 5.

22 Q. Right, so I'm on page 36, just let me know when you get
23 there.

24 A. Are you on page 36?

25 A. Oh, I'm sorry. Go ahead.

1 Q. Okay, page 36 starting at line 14: "Ultimately, Taylor,
2 Bean & Whitaker foreclosed on Old Dell Trace, right?"

3 Answer: "Yes."

4 Question: "Why did that loan go into default?"

5 Answer: "Well, we ran out of cash, and the way we were at
6 that point in time, we were, you know, working on the -- you
7 know, the properties, and that was, you know, where we were
8 making the most money, and my liquidity was drying up and you
9 just made choices."

10 A Choices --

11 Q. Do you remember -- wait -- do you remember that testimony?

12 A. Yes.

13 Q. Okay, and what were the choices that you're referring to
14 there?

15 A. Feeding the children or paying Taylor, Bean & Whitaker.

16 Q. Okay, so going on, page 37, line 3, question: "You said
17 that you were working on the properties and that's where you
18 were making the most money; what do you mean by that?"

19 Answer: "Over the course of the -- I don't know when
20 Taylor, Bean foreclosed, I think it may have been 2011 or 2012,
21 so I don't remember at what point the mortgage was stopped
22 being paid. But we were making the most of our money with the
23 properties that were being sold, like the flipped properties,
24 the ones that I'm talking about -- I mentioned a few minutes
25 ago. So the -- unlike going to work every day and knowing your

1 income, this incomes in in lumps, and you have a pile of money,
2 and then it dwindle -- dwindle down. So with, as they say,
3 seeing the handwriting on the wall, when you know that you're
4 not getting" anywhere -- excuse me -- "when you know that
5 you're not getting any more financing cash, and you don't have
6 enough to finish the project, you -- you know, we stopped
7 paying TBW. And we actually" -- well, I should stop there,
8 it's not relevant to what I'm asking.

9 THE COURT: Why don't we stop for a second and let me
10 read the rest.

11 For completeness, read the rest of the answer.

12 MS. HAGER: I'm sorry?

13 THE COURT: For completeness, please read --

14 MS. HAGER: Sure.

15 THE COURT: -- the rest of the answer. I don't like
16 people to stop in the middle of it.

17 MS. HAGER: Right, I just hesitate because it
18 wasn't --

19 THE COURT: I understand.

20 MS. HAGER: -- directly in --

21 THE COURT: I just want --

22 MS. HAGER: Sure.

23 THE COURT: -- it for completeness.

24 MS. HAGER: So this is the top of page 33, I'll just
25 restart --

1 THE COURT: 38.

2 MS. HAGER: -- 38, restart line 1.

3 Q. "Paying TBW. And we actually went to do a refinance with
4 them, which is a whole other interesting story, and then they
5 went into -- they were shut down -- raided by the FBI and shut
6 down. They fired all 4,000 employees and they -- even though
7 they said they were going to do a refinance, they didn't
8 complete it and they weren't supposed to foreclose, and they
9 wound up foreclosing because they never completed the work
10 that -- you know, the promised refinance."

11 So my question has more to do with the first portion of
12 that answer --

13 THE COURT: Okay.

14 Q. -- where you were saying at the bottom of page 37 --

15 A. Let me see it.

16 Q. -- you saw the handwriting on the wall, you weren't
17 getting any more financing, and you stopped making payments.
18 Does that refresh your recollection as to why you weren't
19 making payments to Taylor, Bean & Whitaker?

20 A. Yeah, I believe we stopped making payments to Taylor, Bean
21 & Whitaker in '09.

22 Q. But you made a choice to stop paying them, right?

23 A. Well, the -- the choice was we were running out of money.
24 As I said, we --

25 Q. Okay.

1 A. -- you know, now, it becomes, do we eat, keep the electric
2 on, feed the kids.

3 Q. Okay, so your answer is yes?

4 A. I mean, it's not a choice, it's -- how is -- what's --

5 THE COURT: Ask your next question, Ms. Hager.

6 Q. So then you entered into a forbearance agreement with
7 Taylor, Bean & Whitaker, right?

8 A. That -- that was before then. The forbearance
9 agreement -- the choice you're talking about was later.

10 Q. Okay.

11 A. The forbearance agreement is first.

12 Q. All right, so at some point, you entered into a
13 forbearance agreement with Taylor, Bean & Whitaker, right?

14 A. Um-hum. Um-hum.

15 Q. I'm sorry?

16 A. Yes.

17 Q. Okay, and you paid them around 20,000 dollars pursuant to
18 that forbearance agreement, correct?

19 A. I thought it was in two parts, I thought it was maybe
20 14,000 and then 20,000. I thought it was like somewhere in the
21 neighborhood of thirty-some-thousand.

22 Q. Okay.

23 A. In between 32-, 38-, 34-, somewhere in that area.

24 Q. Okay, but ultimately, Taylor, Bean & Whitaker, after you
25 made whatever payments you made, they didn't uphold their end

1 of the forbearance agreement, correct?

2 A. Correct, but that's my assertion.

3 Q. Right, Taylor, Bean & Whitaker then foreclosed
4 nonjudicially, correct?

5 A. Eventually, yes.

6 Q. And you and your wife then sued Taylor, Bean & Whitaker
7 because the foreclosure was improper, correct?

8 A. Yes, I didn't think they had the authorization to do it.

9 THE COURT: The only question is, did you sue
10 Taylor --

11 MR. REED: Yes.

12 THE COURT: -- Bean & Whitaker?

13 MR. REED: Yes, Your Honor.

14 Q. You were initially represented in that case by Mr. Waylan
15 (ph.), and then ultimately, you were pro se, correct?

16 A. Yes. Yes.

17 Q. And the basis of the claims in your suit against Taylor,
18 Bean & Whitaker were the Real Estate Settlement Procedures Act
19 and breach of contract for failure to apply the money that you
20 had paid and for failure to abide by the agreement; is that
21 correct?

22 A. Yes.

23 Q. And Taylor, Bean & Whitaker's actions in foreclosing
24 interfered with your ability to sell or rent Old Dell Trace,
25 didn't they?

1 A. I mean, yeah, at the end they took it; I couldn't do
2 anything with it. Absolutely, they foreclosed on it and
3 they -- they took it. There was also -- there was also an --

4 THE COURT: You've answered the question; next
5 question.

6 Q. Right, so your contention is that Taylor, Bean & Whitaker
7 improperly foreclosed on Old Dell Trace, correct?

8 A. Yes.

9 Q. And because they improperly foreclosed, you couldn't then
10 sell the property or rent the property because they foreclosed
11 it, right?

12 A. At the -- at the end, yes, at the end. There was -- there
13 was -- Taylor -- you -- you can't -- it doesn't exist -- that's
14 not a blanket statement. At a certain point, their actions
15 interfered with my ability to do that.

16 The -- not -- not -- you know, since I had the house forever,
17 or I don't think in 2009 I don't think it was interfering with
18 it, in my recollection. I think the foreclosure actions took
19 place several years later, and that -- that caused a problem.

20 Q. Okay, what was Taylor, Bean & Whitaker supposed to do
21 pursuant to the forbearance agreement after you made your
22 payments?

23 A. My understanding is they made a -- my understanding was
24 that in the agreement they affirmatively committed to no
25 foreclosure until they -- they reworked the mortgage, which

1 they never did.

2 Q. And so you sued Taylor, Bean & Whitaker for damages,
3 correct?

4 A. Yeah. Yup, yup.

5 Q. Now, your -- you had filed a complaint, which ended up
6 getting nonsuited, correct?

7 A. Yes.

8 Q. Then you filed another complaint, and that was dismissed,
9 correct?

10 A. Yes.

11 Q. Okay.

12 A. Without prejudice.

13 Q. If you could turn to Exhibit J, which is -- I'll wait
14 until you get it in front of you.

15 A. Okay.

16 Q. Okay, Exhibit J is plaintiff's objection to defendant's
17 LNV and MGC's 12(b)(6) motion to dismiss, filed in the
18 Christina Reed and Frank Reed v. Taylor, Bean & Whitaker
19 Mortgage Corp., et al. case in the United States District Court
20 for the Eastern District of Virginia, case number 3:15-CV-529.

21 Do you recognize this document?

22 A. And it looks familiar.

23 Q. Okay. And so you were the plaintiff in this case, right?
24 So, this is your objection, is that right?

25 A. Okay. What page? I'm sorry. I'm looking at --

1 Q. So, I'm on the -- just on the first page of Exhibit J,
2 RFC-1745. This is --

3 A. Yes.

4 Q. The document we're looking at is plaintiff's objection to
5 defendant's motion to dismiss, right?

6 A. Yes, I believe so.

7 Q. You are your --

8 A. Yes.

9 Q. Sorry. I didn't mean to talk over you. You and your wife
10 were the plaintiffs in this case, right?

11 A. Yes.

12 Q. Okay. And if you turn to RFC-1752, which is the last page
13 of this objection, does your signature appear on that document?

14 A. Yes.

15 Q. Okay. So, you were pro se at this point in the case,
16 right?

17 A. Yes.

18 Q. The document is dated October 22nd, 2015, right next to
19 your signature, right?

20 A. Yes.

21 Q. Okay. And just for clarification on the record, it
22 appears to have been filed on October 23rd.

23 Now on page 1747 of this objection in what is the end of
24 paragraph -- in what is the second half of paragraph 1 but
25 starting with the first full sentence, "Specifically." Do you

1 see where I am? The third line from the top. Do you see where
2 I am, Mr. Reed?

3 A. Yes.

4 Q. Okay. So you said, "Specifically, defendants' failures
5 substantially interfered with plaintiffs' ability to enter into
6 beneficial contracts relating to the subject property including
7 financing, contracts of marketing and sale, as well as rental
8 agreements. Prospective counterparties to these types of
9 actions contemplated and pursued by plaintiffs would not engage
10 in commerce with plaintiffs as the status of the subject
11 property was unverifiable. Additionally, plaintiffs were not
12 able to sell or rent their other house located in New Jersey,
13 as they had to flee to it from the subject property, as their
14 condition remained perniciously precarious due to the
15 defendants' callous failure to respond."

16 So, with respect to that statement that you made to the
17 Court in this case, am I right that you're indicating to the
18 Court that your failure to be able to rent Old Dell Trace or
19 sell Old Dell Trace is attributable to Taylor, Bean &
20 Whitaker's foreclosure action?

21 A. For -- for a certain point in time when they were
22 unresponsive after they were shut down and raided and there was
23 no one available to -- to -- and did not respond. I mean, it's
24 all -- you know, we sent letters through counsel even. There
25 was no one that responded to talk about, you know, can we

1 finish this financing deal, which would lead to an exact dollar
2 amount, what would be the exact dollar amount due on the note,
3 so that we can get clear title. There wasn't even someone to
4 answer the phone to tell you, you know, like a settlement
5 department that said here's what clear title would be. And
6 that went on for I don't remember how long.

7 Q. Okay. And so one of the other things that you said to the
8 Court in paragraph 1 that I just read was that you attributed
9 your inability to sell your property in New Jersey to Taylor,
10 Bean & Whitaker. Was that an accurate representation to the
11 Court?

12 A. Right, because at that -- there came a time during that
13 time where it was clear I couldn't sell the -- the house at
14 that moment and then we -- they wound up -- once they finally
15 responded to us and the record is probably clear on this, once
16 Taylor, Bean & Whitaker or their subsequent company became
17 involved -- you know, now had the files, their response was we
18 don't care about that agreement. We're just selling the house.
19 So, I couldn't -- you know, I had to go back to New Jersey and
20 just live -- and we wound up living -- if I am not mistaken,
21 that's when they was -- responded. We had to go back to New
22 Jersey. Now I am living in that house and then we have to sell
23 it. So, I couldn't sell New Jersey right away. Where was I
24 going to go, back into a hotel? You know, I had to -- I had to
25 go play Monopoly here. I got to go back to New Jersey because

1 now this company who has come out of the woodwork, no one
2 responds because they're all shut down and then finally when
3 someone bothers to care, to respond to us, to our good faith
4 efforts to get in touch with them to resolve it, you know,
5 that's it. And the parties didn't want to converse -- the
6 realtors that we wanted -- we tried to talk to about what can
7 we do with this property at this point, they're like well, we
8 need -- we need clear title.

9 Q. Well, when you moved back into the Matlack property, it
10 was still on the market, wasn't it?

11 A. I don't remember.

12 Q. So, isn't it true that you couldn't sell the Matlack
13 property because you didn't have buyers for the Matlack
14 property, not because you were living in it?

15 A. As I said, there was a time period -- what was it, like a
16 couple of months. So, in other words, we couldn't sell Matlack
17 for a number of months because I -- you know, we had to go to
18 it. We had to get resettled, get our bearings.

19 And -- and -- and then go from there. So, it was not an option
20 to sell that property because where would we live?

21 Q. So, in Exhibit 1 to your objection, which starts on RFC-
22 1753 --

23 A. Okay.

24 Q. -- which is a letter from your lawyer at the time, Dennis
25 Whalen, dated December 19th, 2011 or excuse me, it's from Mr.

1 Whalen. I beg your pardon. I have the wrong exhibit. Bear
2 with me one second. Exhibit 3 which starts, RFC-1758, is a
3 letter from Mr. Whalen to various mortgage companies and a
4 lawyer. The subject line is, "Notice of lenders and servicing
5 agents breach and demand for cancelation of scheduled
6 foreclosure." This letter is dated January 5th, 2012. Have
7 you seen this letter before?

8 A. I believe so.

9 Q. Okay. And if you turn to RFC-1761, the last paragraph on
10 that page of the letter, Mr. Whalen says as follows, "Further,
11 my client's payment of \$19,801.10 in January of 2009, 'fully
12 reinstated the loan' is without merit. The Reeds made the
13 January 2009 payment pursuant to the terms of the forbearance
14 agreement but my client's payment did not automatically
15 reinstate the loan. As noted above, the forbearance agreement
16 expressly requires the subsequent affirmative act of the lender
17 of its authorized servicing agent to, (1) reinstate, (2)
18 execute a loan modification or (3) enter into a written
19 repayment plan. Without completion of the forbearance
20 agreement, there exists no vested and actionable interest upon
21 which acceleration or foreclosure lies."

22 So, does this refresh your recollection as to the
23 substance of the arguments against Taylor, Bean & Whitaker?

24 A. Yeah, I think I am -- I think I've been saying that. I --

25 Q. Well, I thought you had said you didn't remember exactly

1 what they were supposed to do on their end of the forbearance
2 agreement. So now I am just asking Mr. Whelan has laid out
3 three different things that he thinks Taylor, Bean& Whitaker
4 should have done and does that refresh your recollection as to
5 what your contention was, that they should have done after you
6 made your payment?

7 A. Yes, they were supposed to take action after receiving the
8 funds.

9 Q. And if you turn to the next page, RFC-16 -- excuse me,
10 1762, the sixth paragraph down.

11 A. Okay, so say that again?

12 Q. I just want to make sure you're with me. Are you on
13 the --

14 A. 1762?

15 Q. Yeah.

16 A. Where do you want me to go?

17 Q. Sixth paragraph down.

18 A. Sixth paragraph down.

19 Q. Yeah, "The Reeds commenced a substantial expansion and
20 renovation of the property in 2007. They invested over 300,000
21 dollars in a 3,500 square foot expansion of the property,
22 almost doubling its size, along with significant improvements
23 to the quality of the property and the Reeds intended to sell
24 the property at a substantial profit. After making the payment
25 due under the forbearance agreement, the Reeds attempted to

1 list the property for sale with the local listing agent.
2 However, the Reeds' realtor advised at the time and has
3 continually advised ever since, that the property could not be
4 listed, nor would it close in light of the cloud created by the
5 uncompleted forbearance agreement."

6 Do you have a recollection of after making this payment
7 pursuant to the forbearance agreement, trying to list your
8 property for sale?

9 A. Yeah, I -- I talked to realtors about it and they -- they
10 had said to me -- the opinion was one that I held. I mean,
11 there was two elements, one, you know, only investors would be
12 able to buy it at a very reduced price because of the C -- not
13 having a CO and two, we're going to need to have someone to
14 respond to from -- this is a practical matter. We need someone
15 at the -- whoever the mortgage company is at that time, to be
16 able to -- to be able to release the liens to get clear title,
17 to actually, physically consummate a sale.

18 Q. So, even if you had a cash infusion which was significant
19 enough such that you could have completed the renovations and
20 gotten a CO because your renovations were completed, you still
21 couldn't have sold the property, right?

22 A. At what point? According to the successor-in-interest,
23 for Taylor, Bean & Whitaker, their position is during 2009,
24 that we were just somehow confused as to who we should have
25 contacted and they presented records or files indicating that

1 there was someone -- there was a gap in 2009 which no one was
2 available but in 2009, that there was another entity, as I
3 said, a successor-in-interest, an administrator, I don't know
4 what it was, was then available to do that.

5 Q. All right. In this case, you're blaming your inability to
6 sell Old Dell Trace on the trust, right?

7 A. Yes.

8 Q. And you're blaming the foreclosure on Old Dell Trace on
9 the trust, right?

10 A. Financially, yes.

11 Q. But at the same time, you've already blamed Taylor, Bean
12 and Whitaker for the foreclosure on Old Dell Trace because it
13 was improper, correct?

14 A. Well, it was a defense to the foreclosure.

15 Q. Okay.

16 A. I think it was a few things.

17 Q. Okay. It was an improper foreclosure from your
18 perspective, wasn't it?

19 A. At that moment in time, yes.

20 Q. Okay. And --

21 A. But could they have prevented that.

22 Q. There's not a question. And the fact that you didn't
23 complete the renovations --

24 MS. HAGER: Strike that.

25 Q. You testified yesterday that your realtor told you that or

1 there was some discussion with your realtor about putting Old
2 Dell Trace on the market and the realtor had expressed a
3 concern because she said you wouldn't be able to list it
4 without a CO. Do I have that right?

5 MS. HAGER: Let's strike that.

6 Q. Your realtor had a conversation with you at some point
7 about Old Dell Trace, correct?

8 A. Several realtors did.

9 Q. Okay. And you were looking to put Old Dell Trace on the
10 market, correct?

11 A. Always, in all of my properties, I always contemplate
12 that.

13 Q. You were looking to put Old Dell Trace on the market,
14 correct?

15 A. Yes.

16 Q. And you testified yesterday that the reason that you
17 couldn't put it on the market as per the realtor was that it
18 didn't have a CO, right?

19 A. To the general -- right, because the reason is the -- what
20 market --

21 Q. Right, but that was your testimony yesterday, right?

22 A. Yeah, that it couldn't go on because of the CO. It would
23 not be available to a regular homeowner buyer.

24 Q. Right, but there was actually a separate issue which is
25 this Taylor, Bean & Whitaker forbearance agreement, correct?

1 A. For a certain segment of time.

2 Q. So, with respect to the forbearance agreement, it created
3 a cloud on your title which would have prevented you from being
4 able to sell the property, correct?

5 A. For a segment of time.

6 Q. Okay. And what was that segment of time?

7 A. According to my adversaries, it --

8 Q. According to you.

9 A. I don't want to concede their point in court but it
10 appears that -- it appears that it may have only been a segment
11 of time in 2009 based on information that I learned later. I'm
12 not convinced of it a hundred percent but it appears that
13 that -- you know, from the time they were shut down to the time
14 the successor in interest took place, that's the effective
15 interference time frame.

16 Q. So, if you turn to RFC-1767, is this the forbearance
17 agreement we've been talking about? And is that your signature
18 on the second page, page 1768?

19 A. Yes.

20 Q. And it's dated November 11th, 2008?

21 A. And on the first page, it required payments due in their
22 office on November the 12th, 2008 in the amount of 20,000
23 dollars, do you see that?

24 A. Yes.

25 Q. Okay. You were delinquent on the loan to Taylor, Bean &

1 Whitaker at this point in time, correct?

2 A. I found out that it appeared that we were delinquent by
3 notice that I received in the mail.

4 Q. So, at this time you were delinquent on the Taylor, Bean &
5 Whitaker loan, correct?

6 A. I think so.

7 Q. Well, if you weren't delinquent, why were you --

8 A. Yeah, well, that's why I am --

9 Q. -- referring to a forbearance agreement --

10 A. That's what I am saying.

11 Q. -- with them.

12 A. Yes, yes. I believe that we were. That's why I tendered
13 the 20,000 dollars.

14 Q. How far past due were you?

15 A. I don't recall.

16 Q. How much --

17 A. Because I believe that some of the money was paid not in
18 delinquency payments, it was a -- a -- I don't remember the
19 name they called it. It was a restructure fee or something
20 like that but I can't remember the breakdown.

21 Q. So, after you paid them the funds required by the
22 forbearance agreement, they nevertheless initiated their
23 foreclosure, correct?

24 A. Yeah, there was an additional payment too. There was a
25 second payment that was due by --

1 Q. Okay. There was a second payment due but they still
2 foreclosed, right?

3 A. Yes.

4 Q. You did what you needed to do and they didn't do what they
5 needed to do, right?

6 A. Yes.

7 Q. None of that has anything to do with GMAC, does it?

8 A. Other than if they are correct and I did owe them money,
9 which they were demanding and the foreclosure going through is
10 the ultimate, I guess you would say measure of that,
11 they -- GMAC does because my cash -- it was cash that I -- I
12 didn't have to pay them.

13 Q. But you were paying. You just testified that you've made
14 payments to Taylor, Bean & Whittaker and they're the ones that
15 dropped the ball, right?

16 A. Right, and then they demanded more money.

17 Q. Yeah, if they did what they needed to do, they wouldn't
18 have foreclosed on you is your argument, right?

19 A. This is a matter of --

20 THE COURT: Could you answer the question?

21 MR. REED: The --

22 THE COURT: Can you answer that yes or no?

23 A. Say that again?

24 Q. You did what you needed to do and they dropped the ball,
25 right?

1 A. Not according to them.

2 Q. What about --

3 THE COURT: What about according to you, Mr. Reed?

4 You're the one who is here testifying.

5 MR. REED: I thought so, Your Honor.

6 THE COURT: Okay. Next question.

7 Q. And does that have anything to do with GMAC?

8 A. Yes, my understanding is I was going to have to continue
9 to make payments. That's the ball that they dropped. Just
10 the -- which dollar amount were those payments. That wasn't
11 going to absolve me of payments. I was going to need to make
12 payments. It was just -- and it was a matter of what dollar
13 amount. So, that's what has to do with GMAC. That's what has
14 to do with -- the cash, my cash, my ability to pay for things.

15 Q. Okay.

16 A. That's what has to do with GMAC.

17 Q. Yeah, okay. You had made the payments though under the
18 forbearance agreement, right?

19 A. Yes.

20 Q. Okay.

21 A. With the understanding that that --

22 Q. Okay.

23 A. -- that wasn't a payoff.

24 THE COURT: Listen to the question. Next question?

25 MR. REED: I'm getting aggravated.

1 THE COURT: How much longer do you have on your cross?

2 MS. HAGER: Not long.

3 THE COURT: Go ahead.

4 MS. HAGER: Could be five minutes.

5 THE COURT: Go ahead. We'll take a break when Ms.
6 Hager completes.

7 MR. REED: Okay.

8 Q. If you could turn to your exhibit --

9 THE COURT: Are you marking Exhibit J in evidence?

10 MS. HAGER: I'm sorry. Yes, Your Honor, I would like
11 to move Exhibit J into evidence.

12 THE COURT: All right. It's in evidence.

13 (Unidentified document was hereby received into evidence as
14 Trust's Exhibit J, as of this date.)

15 Q. If we could turn to Mr. Reed's Exhibit 24. Do you have
16 that in front of, Mr. Reed?

17 A. Yes.

18 Q. Okay. If you could turn to the thirteenth page of that
19 exhibit which pertains to 133 Brookschase Lane.

20 THE COURT: What does it say?

21 Q. So, at the very top in the header, transfer and
22 assessment. Then County of Henrico, Finance Department Real
23 Estate Assessment Division and then parcel information and it
24 gives the parcel address of 133 Brookschase Lane.

25 THE COURT: Okay. I have that.

1 A. Yes.

2 Q. And we talked about this the other day. Do you remember
3 that?

4 A. Yes.

5 Q. Okay. And if you look down in the transfer history,
6 there's a sale date of March 3rd, 2006, sales price 400,000
7 dollars listing you as the owner. Was that your purchase
8 price?

9 A. Yes.

10 Q. Okay. And then there's above that a sale date of 6-2-08
11 sales price, 550,000 dollars. Was that your sale of the
12 property?

13 A. Yes.

14 Q. Okay. So, did you net 150,000 dollars --

15 A. No.

16 Q. -- from the sale?

17 A. No.

18 Q. What was your net?

19 A. I -- I -- I -- we had a -- there was an amount of money
20 due for improvements on the land. It was agreed to that I had
21 to pay from that. There was back payments that were due on it.
22 I don't know. I can't remember. Hmm.

23 Q. Do you remember your deposition testimony where you agreed
24 with me it was at least 100,000 dollars?

25 A. It could have been. It could have been.

1 Q. What --

2 A. No, I'm saying that it -- at that time -- I'm not saying
3 it was 50,000 dollars. I believe it was north of 50,000, maybe
4 it was 100- -- I don't remember. And I've been looking for
5 these documents to try and find that out even. I mean, the
6 settlement documents for it, in -- for preparation for this
7 case.

8 Q. And you had a second mortgage on the Matlack property that
9 was with Homecomings, is that right?

10 A. That's correct.

11 Q. And you made an agreement with Homecomings to pay less
12 than the amount due to pay that off in full, is that right?

13 A. I -- I did. Thank God I did, yes.

14 Q. And it was a 400,000 -- and some thousand dollar loan, and
15 you paid 167,000 to cancel it, right?

16 A. I believe that's what they accepted.

17 Q. Okay. And we talked yesterday about the blanket loan with
18 TD Bank for your rental properties.

19 A. Yes.

20 Q. Right? That was a 665,000 dollar loan that was made in
21 June of 2008, is that right?

22 A. Yes.

23 Q. And was it your testimony that that loan went into default
24 when TD learned of the Matlack foreclosure in 2008?

25 A. I understand that that was a default and that was a reason

1 for that. I --

2 Q. But --

3 A. Go ahead. I'm sorry.

4 Q. No, are you finished?

5 A. Yeah.

6 Q. You're finished. Okay. Is it your testimony that you
7 made payments to TD Bank as and when due?

8 A. I don't remember when we made the payments. I thought we
9 were making payments on that loan. It's my recollection that
10 we were.

11 Q. And you refinanced that loan in 2009, is that right?

12 A. No, I believe that loan was in -- isn't that -- isn't it
13 the 2008 June loan? That was the blanket mortgage because that
14 was the last transaction I did with TD Bank.

15 Q. Right. I am talking about the 2000- -- the loan that you
16 originally closed in 2008, didn't you refinance that in 2009?

17 A. No, we -- no, we -- I don't have another loan with TD Bank
18 after 2008. They settled on that loan I think in 2008. Isn't
19 that the loan package we were examining yesterday?

20 Q. It is. So, if you want to take a look at your deposition
21 transcript from April 26th, 2011, which is tab 2 in the
22 deposition binder.

23 A. Okay. Hold on a second.

24 Q. Sure.

25 A. That's the transcript binder you said, right?

1 Q. Yes.

2 A. Okay. And where am I?

3 Q. Tab 2.

4 A. Tab 2.

5 Q. It's your deposition from April 2011.

6 A. Yep.

7 Q. Okay. So, if you turn to page 33 --

8 A. Okay.

9 Q. Let me -- I'm sorry, we'll go back just to page 32, so I
10 can get the question. Question -- sorry, line -- page 32, line
11 24.

12 A. Okay.

13 Q. "Q. Who did you apply for credit from in 2009?" On page
14 33.

15 "A. That was Commerce Bank, I think it was Commerce Bank at
16 the time.

17 "Q. When you previously mentioned Commerce in 2008, is it now
18 your testimony that it was actually 2009?

19 "A. Different transactions.

20 "Q. What was the transaction or the reason you were applying
21 to Commerce in 2009?

22 "A. 2009, you said

23 "Q. Correct.

24 "A. That was for refinancing on the three rental properties.
25 They were rentals at the time.

1 "Q. And were you able to refinance?

2 "A. Oh, yes. May I take a break?"

3 And then if you turn -- consistent with this line of
4 questioning, if you turn to page 64, line 16 -- do you have
5 that?

6 A. Yes.

7 Q. Okay.

8 "Q. After the 2008 Commerce and Allied refinancing, you
9 indicated there was only one other refinancing in 2009 with
10 Commerce or TD, whatever it was at the time, is that correct?

11 "A. Yes."

12 Does that refresh your recollection as to the refinance of
13 the blanket lien in 2009?

14 A. There -- there was no refinance. I -- I had my year
15 wrong. It was 2008. I don't know why I would say that. There
16 was no -- the only continued conversation with TD Bank and
17 their records prove it, Mr. Curley talks about it, our last
18 consummated deal was the cash-out refi on the properties in
19 2008 and then we had this way -- like I said, the dialogue, the
20 way we --

21 Q. Okay.

22 A. -- we contemplated the other loan, that I believe ran into
23 even as far as 2009.

24 Q. So, you're sworn testimony in the April 2009 deposition is
25 inaccurate, is that correct?

1 A. According to the best of my recollection, that's what I am
2 supposed to answer, and I -- I clearly made a mistake because
3 the -- the record is true and now after being through all of
4 these documents, that is correct.

5 Q. Okay. And it's -- I asked you a few moments ago whether
6 or not you were current on your payments to TD Bank and you
7 answered me yes.

8 A. Which -- which -- please rephrase that. Which payments
9 are we talking about?

10 Q. So, you had a blanket loan with TD Bank which secured the
11 rental properties.

12 A. Which was consummated in 2008.

13 Q. Were you current on that loan?

14 A. For a period of time, I believe I was. I thought it was
15 through -- until 2009, that's what I believe, until like
16 maybe -- let me think about this -- it may have even all the
17 way been -- been all the way to when MetLife terminated
18 my -- my disability in November. So, I think TD
19 Bank -- sitting here now, thinking about how -- what position
20 we were -- again, this is like a -- man, this was like a roller
21 coaster, okay? Oh, you know, backup again. MetLife's -- okay.
22 I believe that TD Bank, we managed to keep paying them from the
23 refinance point through -- through November of 2009, maybe
24 through the end of the year even. It was over a year-and-a-
25 half, we expected -- everything was going forward again and we

1 were paying them. So, I believe that that -- that was current.

2 I'm not -- my memory says that that was current.

3 Q. But at some point, you stopped paying.

4 A. I think -- the way I remember that, yes. At some point I
5 did stop paying, yes.

6 Q. Okay. Which is a default under the terms of the note and
7 mortgage, correct?

8 A. I think it would -- I know that it was after we talked to
9 the bank and they said they were taking the properties because
10 they accelerated the whole payments.

11 Q. Well, if they were taking the properties, why would you
12 continue paying?

13 A. That's what I am saying to you. This is when I stopped.
14 So, when we had the conversation, I don't remember who the guy
15 was from the asset -- I never met him, because it was a call
16 from him, not from Curley, that said look, you know, the
17 payments -- we're not seeking monthly payments anymore. You
18 know, we're going to be accelerating -- we're going to be
19 accelerating this mortgage and you're going to have to come up
20 with the 600 and some thousand dollars and then I later found
21 out why. Like, you know, it's all those documents and stuff
22 like that. And -- and -- because I was like, what do you mean,
23 I thought we signed a twenty-year-, you know -- a twenty-year
24 note. How is this happening? And now we know why it had
25 happened.

1 So, I'm not going to, you know -- when I know that's
2 coming down the pike, when it's already been told to me that
3 this is -- they're going to take it and they're going to
4 accelerate it, then -- they don't even want me to send the
5 payments. Maybe the accounting department doesn't know I don't
6 need those payments, so maybe there's a few months where I
7 stopped the payments and -- and it looks like I'm past due on
8 the -- on the thing but they've already told me, they're taking
9 the damn property.

10 So, I don't -- I don't know. I can't answer to their
11 internal accounting but I am just telling you that we were
12 paying -- my recollection is that we were paying. I was
13 getting my money from MetLife. We were paying our bills. We
14 were still waiting to hear from Taylor, Bean & Whitaker, and
15 then TD Bank, just out of the -- you know, I'm thinking I'm
16 riding out the storm, everything is going fine and then TD Bank
17 is like, no, we're taking the properties.

18 Q. Your previous testimony was that you applied for financing
19 with TD Bank in the early part of 2008, correct?

20 A. Yes.

21 Q. And in connection with that, you were denied financing
22 because of the Matlack foreclosure, correct?

23 A. Yes.

24 Q. And that then once they learned of that in that process,
25 TD Bank took negative action against your blanket loan,

1 correct?

2 A. My understanding is they accelerated the note because
3 that's what the guy told me and it -- and it demanded the
4 entire -- the payoff.

5 Q. Well, what point in time did that happen?

6 A. I believe -- I believe I got a call in 2009 but I don't
7 remember when. I don't remember when.

8 Q. So, if you could turn to page 21 of the April 26th, 2011
9 deposition transcript that we looking at, tab 2.

10 A. Okay.

11 Q. Page 21, line 1.

12 "Q. How are you currently paying the taxes and carrying costs
13 for all the five properties that you mentioned?"

14 A. Wait, where am I?

15 Q. Sorry, this is page 21.

16 A. Page 21.

17 Q. Tab 2 of the April 2011 deposition transcript.

18 A. Okay.

19 Q. You have that?

20 A. Yep.

21 Q. Okay. Page 21, line 1:

22 "Q. How are you currently paying the taxes and carrying costs
23 for all the five properties that you mentioned?"

24 "A. We are not currently doing that.

25 "Q. Do you have a mortgage on the Stratford property?

1 "A. Yes.

2 "Q. Tell me, are you current on that mortgage?

3 "A. I am not.

4 "Q. And how past due are you on that Stratford mortgage?

5 "A. Ten months, I think.

6 "Q. How about the Sicklerville property, does it have a
7 mortgage on it?

8 "A. Yes.

9 "Q. Are you past due on that?

10 "A. May I please clarify?

11 "Q. Please.

12 "A. 318, 52 and 21, are on a blanket mortgage. It's one
13 mortgage.

14 "Q. Just so I am clear on the recording, the properties, 318
15 Columbia, 52 Stone Hollow and the 21 Darien Drive are all under
16 one mortgage?

17 "A. Correct.

18 "Q. Who is that mortgage with?

19 "A. TD Bank.

20 "Q. What was the original amount of that mortgage?

21 "A. 660.

22 "Q. And on that mortgage, you estimate that you're about ten
23 months behind, is that correct?

24 "A. Could be more than a year but I am not sure. I don't
25 know.

1 "Q. Has foreclosure started against any of those properties?

2 "A. Yes, it has."

3 Does that refresh your recollection as to the timing of
4 the payment default on the TD Blanket loan?

5 A. Well, the -- as I said, yeah, the --

6 Q. Yes or no?

7 A. I don't think there was a payment default.

8 THE COURT: Sir, that wasn't the question. The
9 question was does it refresh your recollection, yes or no?

10 A. Well, the payments, yes, I think it does.

11 THE COURT: Next question?

12 Q. Does it refresh your recollection as to when you stopped
13 making payments on the blanket loan?

14 A. Let me look at this. This was taken 2011. A year back
15 would be 2010. 2008, 2007 -- it's off compared to -- it's
16 slightly off compared to what I think -- I thought it was
17 when -- well, maybe right -- might be right because I think I
18 just said that like it was related to MetLife at that time,
19 too. So, it would be -- MetLife was November of '09, so maybe
20 a few more months. I can't remember. It's -- it's similar,
21 very similar.

22 THE COURT: Next question.

23 MS. HAGER: Okay.

24 Q. In your testimony, I believe on Tuesday, I just wanted to
25 clarify something that you said, I believe you said that in

1 early 2008, Cooper was in Matlack and the kitchen was demo'd.
2 And I was wondering if you meant early 2009 when you gave that
3 answer the other day.

4 A. Yes, see -- see I confused the -- I misstated the --

5 Q. Okay.

6 A. -- the years sometimes.

7 Q. The Judge had asked you a question the other day,
8 um- -- about whether or not you had enough money to cure the
9 default on the Matlack property in May of 2008 and you had
10 answered you weren't sure. Do you remember that exchange?

11 A. Yes, I don't remember what we had in -- available at that
12 moment. I don't -- I don't -- we don't have any of our
13 checking account statements or anything like that.

14 Q. Okay. You had enough money to cure the default on Matlack
15 in June of 2008 though, right?

16 A. I don't know.

17 Q. Okay. So, if you want to turn to tab 4 in the deposition
18 book, it's your deposition transcript from August --

19 A. Okay.

20 Q. -- 14th, 2014.

21 A. Okay. I'm at tab 4. Can you say it again?

22 Q. Right, so tab 4, page 114, starting at line 24. Let me
23 know when you get there.

24 A. Okay. Page 114, tab 4.

25 Q. Right, line 24.

1 "Q. In June of 2008, you had the ability to bring the mortgage
2 current, didn't you?

3 "A. Yes.

4 "Q. And certainly in November of 2008, when Mr. Cooper made
5 his payment, you definitely had the ability to bring the
6 mortgage current at that point, right?

7 "A. That's correct."

8 Does that refresh your recollection as to whether you had
9 enough money in May of 2008 to cure the default on Matlack?

10 A. I guess I may have. I don't -- I -- I don't know -- when
11 did I do this? When was this deposition? 2014? I guess.
12 I -- I may have had material then. I don't know.

13 Q. So, did you have enough money in May of 2008 to cure the
14 default on the Matlack property?

15 A. We might have.

16 Q. Okay. Thank you. I don't have anything further.

17 THE COURT: All right. We'll take a fifteen minute
18 recess and then, Mr. Reed, I assume you have -- you want to
19 testify again?

20 MR. REED: Yes, just give me a -- one minute. I want
21 to use the bathroom, a small amount of time.

22 THE COURT: Yeah, we're going to take a fifteen minute
23 recess and then we'll resume at ten minutes to 12.

24 MR. REED: Okay, great.

25 THE COURT: Is Walters showing up today?

1 MR. REED: No, no. Ms. Hager and I talked about what
2 we think is the appropriate legal theory or governing law, just
3 like we did with the expert witnesses.

4 THE COURT: Yes.

5 MR. REED: So, we're not going to -- we're not going
6 to --

7 THE COURT: Ms. Hager, what's your position about Mr.
8 Walters?

9 MS. HAGER: Well, as I stated on the record yesterday,
10 I think that his invoices are hearsay.

11 THE COURT: You're continuing to object to them?

12 MS. HAGER: Yes.

13 THE COURT: Okay. Your objection is sustained.

14 He's --

15 MR. REED: Yeah, we don't care. That's fine. I was
16 trying to --

17 THE COURT: It doesn't come into evidence, Mr. Reed.

18 MR. REED: Yeah. Yeah, I'm good with that. That's
19 fine.

20 THE COURT: So, you're the last witness.

21 MR. REED: Whoa-hoo!

22 THE COURT: Okay. Fifteen minute recess.

23 MR. REED: You know what I am going to do? I'm going
24 to come and stay and watch your courtroom one night, when this
25 is all done. Come --

1 (Recess from 11:36 a.m. until 11:55 a.m.)

2 THE COURT: All right. Mr. Reed, your opportunity to
3 testify again.

4 MR. REED: Your Honor, the --

5 THE COURT: But let me just make clear, your testimony
6 has to be limited to the --

7 MR. REED: Yes.

8 THE COURT: -- cross-examination. Go ahead.

9 MR. REED: Your Honor, one of the things that sticks
10 out in mind that I would like to address is about the sixty
11 percent completion of the appraisal putting that in the
12 appraisal. If you can -- if you can look at to -- just to
13 refresh your memory go to tab 44 of my book. It's photos of
14 the property.

15 THE COURT: This is the damage.

16 MR. REED: Yeah, this is the damage but you can see
17 other parts of the house. You want to --

18 THE COURT: I have it. No, I don't need it. I've got
19 it right here.

20 MR. REED: So, I am going to go to a couple of pages.
21 First, I would like to say in general, these photos were
22 taken -- I guess -- I guess it was like November of '08. The
23 appraisal was done in March of '08. So, my concern about the
24 appraisers use of sixty percent, I don't understand how
25 you -- what he's referring to. Is he referring to the sixty

1 percent of the -- you know, the enclosure and stuff like that?
2 Because clearly inside the house, the -- you know, and -- and
3 the exterior of the house, the roof was on -- the siding had
4 yet been put on -- which reminds me --

5 THE COURT: Just stay on point

6 MR. REED: Okay. If you look at these photographs,
7 you will see it's -- it was just a shell, the addition of all
8 that work was done. So, it's not sixty percent. If you -- if
9 you go to photo 1, the very top on the right hand side, you see
10 the trims aren't even on the doors. They're framed out. If
11 you go to photo number 2, you can see that the family room is
12 bare floor and the ceilings aren't even put in. That's the old
13 drywall that has to still be removed in that -- in that -- in
14 those photos.

15 THE COURT: Sir, are you suggesting that in giving an
16 appraised -- a subject to appraised value of 1.725 million
17 dollars, based on what the appraiser thought was sixty percent
18 completion, that he didn't have a sufficient basis to provide
19 an appraisal because less than sixty percent was done?

20 MR. REED: I don't know what -- all I am trying to say
21 to you is I don't know what he means by sixty percent.
22 Sixty -- I guess he thinks physically --

23 THE COURT: Well, you can't testify about what he
24 thought.

25 MR. REED: Yeah, okay. So, I -- I guess --

1 THE COURT: You disagree with his sixty percent.

2 MR. REED: I don't know what it means. So, I --

3 THE COURT: You disagree with his sixty percent. You
4 don't think it was sixty percent complete at the time that the
5 appraisal was done. Is that right?

6 MR. REED: Yeah, I think -- I think we put more in
7 there.

8 THE COURT: Okay. Let's go on.

9 MR. REED: And, I think, Your Honor, the primary thing
10 that I wanted to say in regard to the line of questioning Ms.
11 Hager had is, you know, clearly we had other -- other cards,
12 other possibilities. You know, I -- I was in the drink on
13 a -- on a lifeboat and if -- if multiple possibilities,
14 multiple solutions, multiple rescue boats could have come, to
15 fix that or save -- salvage -- save me, a sale of the property
16 in that light -- TD Bank, the -- Rob Maines, my wife's own
17 cousin and more of a drawn out answer, would have been MetLife,
18 Brett Cooper coming through on that purchase for an extended
19 lease, any of these things could have been a rescue.

20 The wrongful act that -- I understand that the trust
21 will be culpable for and why I've done all this and pursued
22 others, as well, is despite the fact others could have rescued
23 me, their behavior caused three possible rescues to not occur
24 or to have a contributing factor causing them not to occur. It
25 doesn't alleviate them just because there were other boats that

1 passed me by, doesn't -- my understanding alleviate that.

2 I'll -- so that's why I've done that -- I've done all of this.

3 You will do your analysis, I guess, in --

4 THE COURT: Listen, this is not the time for the

5 argument.

6 MR. REED: That's right. That's not a time for that.

7 I just realized that.

8 THE COURT: My plan is to have you finish your
9 testimony before lunch, break for lunch and have you both come
10 back and do closing argument.

11 MR. REED: Okay. Your Honor, I think that's -- I
12 think maybe that's it.

13 THE COURT: Okay. All right.

14 MR. REED: Yeah.

15 THE COURT: So, it's noon. Come back at 2 o'clock.
16 You go first. You give your closing argument first and then
17 Ms. Hager -- Ms. Hager?

18 MS. HAGER: Well, I don't want to interrupt, Your
19 Honor --

20 THE COURT: No, go ahead.

21 MS. HAGER: -- but can we -- can I just clarify that
22 Mr. Reed is resting his case?

23 THE COURT: Yeah, I'm going to ask you both before we
24 walk out of here. That's how we'll proceed. So, I think I had
25 told you earlier when each -- I ask each side if they rest.

1 You're not calling any witnesses, is that correct, Ms. Hager?

2 MS. HAGER: That's correct, Your Honor.

3 THE COURT: Do you rest?

4 MR. REED: Yes, sir.

5 THE COURT: Do you rest, Ms. Hager?

6 MS. HAGER: Your Honor, I would move for a directed
7 verdict. That's what I am asking.

8 THE COURT: Denied.

9 MS. HAGER: Thank you.

10 MR. REED: Can I make one?

11 THE COURT: You can, denied. Okay.

12 All right. So, the evidence is closed. Whatever
13 exhibits have come into evidence are in evidence and come back
14 at 2 o'clock.

15 MR. REED: Okay.

16 THE COURT: And I will allow each side thirty
17 minutes --

18 MR. REED: All right.

19 THE COURT: -- for their closings. And I'll see you
20 at 2 o'clock. Okay?

21 MR. REED: Thanks, Your Honor.

22 THE COURT: All right.

23 (Recess from 12:02 p.m. until 2:01 p.m.)

24 THE COURT: All right. Please be seated. Residential
25 Capital, 12-12020. It's time for closing arguments in the

1 trial of the contested matter or the claim of Frank Reed.

2 Mr. Reed?

3 MR. REED: Your Honor, I wrote -- so I am going to
4 read it, if you can bear with me while I do it. I might be a
5 little dry.

6 Let's keep a clear picture of what happened, who did
7 what and what it means. First, it is settled law, in fact,
8 that GMAC Mortgage fraudulently foreclosed on me. Okay. Now
9 what does that really mean? To understand, I offer this
10 comparison.

11 GMAC Mortgage was only my servicer. Essentially, they
12 were a middleman between the true party I owed money to and
13 myself. And as such, I owed them no money, not a single cent
14 to GMAC Mortgage. You know who else was a middleman between me
15 and the true party I owed money to? My mailman. Both GMAC
16 Mortgage and my mailman had no right ever to file a foreclosure
17 against me. That is why GMAC was found guilty under the NJCFA.
18 They did not own my note and as such, I never owed them a
19 single dollar.

20 If I had, I am sure they would have brought a
21 countersuit here in these proceedings but they didn't. They
22 even admitted they did not own the note. That was the basis of
23 what our -- how we moved forward in this case.

24 Their mere knowledge or this Court's mere knowledge
25 that I had a late paying to a third party, not them -- not

1 them, but a third party, did not give them the right to
2 foreclose, just as it would not have given my mailman the right
3 to foreclose against me, if he noticed, for example, that I did
4 not send a couple of payments out because he handled my mail.
5 So, as far as GMAC Mortgage is concerned, the entity I never
6 owed any money to, this is important to identify because it
7 makes their act particularly heinous or offensive, just like it
8 would be if my mailman did it.

9 What has been --

10 THE COURT: Your mailman is not the loan servicer for
11 the holder of the note, Mr. Reed. GMAC was the loan servicer.

12 MR. REED: The servicer, which is a middleman.

13 THE COURT: It's not the mailman, Mr. Reed.

14 MR. REED: No, the middle -- a middleman. They didn't
15 own the note. I never owed G -- I don't want to -- this has
16 already been found by your proceedings. I did not owe GMAC
17 Mortgage a financial obligation. I never did.

18 THE COURT: Who were you making your monthly payments
19 to, Mr. Reed? Who were you making your monthly payments to?

20 MR. REED: GMAC Mortgage, as a collector, a bookkeeper
21 of sorts. That's who they were. They did not own the note.
22 This has already been determined. They admitted it. They did
23 not own the note and they never owned the note. GMAC Bank, an
24 ally, nonbankrupt entity, owned my note, not GMAC Mortgage or a
25 party to this bankruptcy. That's important to keep in the

1 forefront of everyone's mind because it doesn't -- it gave them
2 no rights ever. There's been no evidence --

3 THE COURT: Mr. Reed, the issue in this trial --

4 MR. REED: Is the damages.

5 THE COURT: Yes, so get onto the damages, Mr. Reed.

6 MR. REED: I'll get on with it, Your Honor.

7 THE COURT: I know what I wrote in the first opinion.

8 Let's get onto the issues that were in this trial.

9 MR. REED: I'm about there.

10 Now what did GMAC Mortgage's wrongful act cause? It
11 caused the loss of cash and property. Both things that are
12 ascertainable losses under the New Jersey CFA. Now before I
13 get into the actual quantification of the loss, I feel
14 compelled to remind the Court that causation means what
15 causation means under the NJCFA. A causal connection must be
16 shown between the defendant's unlawful conduct and plaintiff's
17 ascertainable loss, however -- see Pian (ph.) v. GreenPoint
18 Mortgage Funding -- however, the wrongful conduct need not be
19 shown to be the sole cause of plaintiff's loss, but may be
20 shown to be nearly have contributed to the loss, Arcan v.
21 Brother International Corp. (ph.), noting this is not the rule
22 for common law fraud. To be liable, GMAC Mortgage has only to
23 be a straw in a proverbial bundle that breaks the camel's back.

24 Evidence has been entered here in these proceedings
25 that unequivocally demonstrates that the wrongful foreclosure

1 caused others to not deliver to me cash and the loss of that
2 cash further compounded my problems and loss by causing the
3 loss of property, albeit these were loans, for example, or
4 investments, that did not happen but nonetheless, they would
5 have resulted in cash in my hands.

6 I would like to take a moment to emphasize this as a
7 loss in and of itself. Contemplate this; if GMAC Mortgage's
8 bad act caused me to lose cash from a loan that I closed on the
9 day before, after I received it, it would be a loss. What is
10 the difference between stopping me from getting it in the first
11 place? So, the lost loan proceeds are, in fact, a lost cash.
12 And I think they also fall within the equitable remedies
13 provided under the statute. It's not merely just damages.
14 It's a different type of statute. It's broader and more
15 encompassing.

16 Now as to the property in Old Dell Trace. Evidence
17 has been put on that clearly demonstrates that I did nothing
18 but try to finish the property with whatever resources I had at
19 various times. GMAC Mortgage's fraudulent foreclosure caused
20 the loss of the necessary funds or funds that could have
21 completed the project and allowed me to realize its value
22 through either a sale or a retention as a rental that I would
23 still own today.

24 As to the three rental properties in New Jersey rented
25 by the Oxford House and financed by TD Bank, it is the

1 unrebutted testimony from the president of TD Bank for the half
2 of the State of New Jersey that was vetted by their counsel and
3 fully researched and I would imagine corroborated internally,
4 that TD Bank took my rentals because of the foreclosure, was a
5 violation of my note.

6 THE COURT: Mr. Reed, what about the testimony from
7 your prior deposition that counsel put in today where you
8 testified that you were twelve months in arrears on your
9 mortgage for the three properties.

10 MR. REED: Your Honor, I believe that as I said, that
11 that was --

12 THE COURT: You have this penchant to say what you
13 think is going to help you in whichever case you're in and in
14 your prior deposition, you testified that you believed that you
15 were approximately twelve months in arrears on the mortgage
16 with the -- it was the restructured mortgage on your three
17 rental properties. You told me when I asked you, I asked you
18 specifically, whether you were current on those mortgage
19 payments and you told me yes. In a prior deposition much
20 closer to the acts or events, you testified that you were
21 twelve months in arrears.

22 MR. REED: Your Honor, that testimony that was
23 introduced today in a deposition was from 2011. Your question,
24 if you go back to the record --

25 THE COURT: Closer to the acts or events involved when

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111

1 typically a memory is better than it is today. But you say
2 whatever you think is convenient for you at the moment. So you
3 told me in answer to my questions that you were current, in
4 terms of each --

5 MR. REED: In 2009.

6 THE COURT: -- Ms. Hager put in your deposition
7 testimony --

8 MR. REED: Okay.

9 THE COURT: -- where you acknowledged you were twelve
10 months in arrears. You told me you were never in arrears on
11 it.

12 MR. REED: Your Honor, you were asking me what I was
13 in 2009 and I even elaborated. You can look at the record.
14 I'm pretty sure I said I paid through 2009 and you asked me
15 when you had foreclosed. I thought it was later. So, I -- I
16 gave you approximate time that I thought I was in -- current
17 and that closely approximated what I said in the 2011. I never
18 said I was completely current. I even testified that I
19 believed after I was told or I know after I was told they were
20 going to take them, that I stopped the payments.

21 You can look back at that. I'm sure you're going
22 to -- you're very critical and I know you're going to do this.
23 So, let me finish putting on the record what I would like to.

24 TD Bank themselves put on the rec -- TD Bank testified
25 they took my rentals because the foreclose was a violation.

1 The actual actor is the one who testified to that. Thus,
2 the --

3 THE COURT: You put that in a declaration that did not
4 come into evidence, Mr. Reed. Those words you've just read to
5 me were in a supplemental declaration that was not admitted in
6 evidence.

7 MR. REED: Mr. Curley stated it in his testimony. I'm
8 upset that you don't remember that.

9 That caused the loss of the rental properties. And as
10 they were rented by an organization that rented them long-term
11 and indicated -- as indicated in their testimony that you will
12 either read or have read, they would have continued to do so,
13 infinitum. There must be a loss of rents figured into the
14 damage as well.

15 I'm going to also remind the Court that under the
16 NJCFA I merely have to make a showing of an estimate that the
17 Court can base damages on. An ascertainable loss does not
18 simply limit it to a lost profit or conversions. It's broadly
19 written and construed as equitable remedies and can include the
20 lost loans and the foreclosure of the property. I believe that
21 I've submitted a thorough and sufficient amount of evidence in
22 regard to the Virginia property, the rentals and the lost cash.

23 Finally, I must say that GMAC Mortgage, a party I owed
24 no obligation, no money to, wrecked my life, causing great deal
25 of problems by torpedoing the business I had been doing for

1 twenty years -- you could see it in the contemporaneous
2 business records with TD Bank even -- and by causing at least,
3 or being the partial cause -- and that's all they have to
4 be -- for the at least three rescue boats, meaning Maines,
5 Kline, and TD Bank, from rescuing me.

6 And to add insult to injury, they have done nothing
7 but offer up snickering criticism of the choices I made to try
8 and salvage value for my wife and children as I climbed into
9 the lifeboat. They criticize what I put into the boat, what
10 direction I rode and what I chose to do, whether to feed the
11 kids or row in this direction or row in that direction. This
12 has truly upset me, as their -- especially as their actions are
13 what caused me to be in a lifeboat in the first place and
14 further stopped the rescue, again, by three parties.

15 I would like to on a personal note say that I'm sorry
16 if I aggravate this Court. I've done my best to do this. And
17 if the Court takes time and looks through the stuff, it should
18 understand that I genuinely have worked diligently to try and
19 do -- and represent the facts and research them and remember
20 them and present them and follow the rules of the Court to
21 properly represent what I think happened to us, and to present
22 the Court with an ability to estimate a fair resolution. And I
23 ask the Court, if it does not agree, that it, when it
24 pronounces its decision, does so in a way that -- I don't know.
25 Just hope it doesn't upset me further. Thank you, Your Honor.

1 THE COURT: All right.

2 Ms. Hager?

3 MS. HAGER: Your Honor, I don't think there's any
4 doubt that there certainly was a lot going on in Mr. Reed's
5 life in the 2007-2010 time frame. But the issue that we're
6 here on is that Mr. Reed hasn't proven that any of the issues
7 he's talked about were caused by GMAC's actions. He's failed
8 to submit any evidence to show a causal nexus between the
9 unlawful conduct and the alleged damages. While Mr. Reed is
10 correct that a plaintiff is required to prove only that the
11 defendant's conduct was a cause of damages as opposed to the
12 sole cause, the cause still has to be a proximate one. And
13 that's really one of the main key factors that's missing here.

14 The causal-nexus requirement stems from the portion of
15 the statute that requires a private plaintiff to show an
16 ascertainable loss as a result of the violation. And even if
17 he can prove the connection, he still has to prove his
18 ascertainable loss through sufficient methodology and competent
19 evidence, which he failed to do.

20 He argues that New Jersey law -- or in his papers he
21 did anyway, that New Jersey law will not preclude recovery of
22 damages simply because a plaintiff may not be able to fix his
23 damages with precision. However, the case law cited by
24 Mr. Reed contemplates proof, as to lost profits, consisting of
25 testimony and other evidence about the normal profit margin of

1 a business as applied to the facts and monetary figures of the
2 case.

3 THE COURT: So Mr. Reed testified that his normal
4 margin in buying and selling houses is twenty percent. Isn't
5 that evidence that fills that --

6 MS. HAGER: Well --

7 THE COURT: -- fills that gap?

8 MS. HAGER: I don't think it's competent evidence, as
9 demonstrated by the numerous occasions on which I was able to
10 impeach Mr. Reed's testimony. And as Your Honor so clearly
11 stated, Mr. Reed seems to testify in the way that befits him
12 under the circumstances.

13 THE COURT: On the --

14 MS. HAGER: So that is of course for Your Honor to
15 weigh.

16 THE COURT: On the issue of what his usual margin is,
17 you didn't cross-examine him on that.

18 MS. HAGER: That's right.

19 THE COURT: Okay, go ahead.

20 MS. HAGER: That statement I made about the normal
21 profit margin is from the VAL Floors, Inc. v. Westminster
22 Communities, Inc. case, which is 810 A.2d 625 at page 631 (N.J.
23 Super. Ct. App. Div. 2002). In that case the court goes on to
24 say that a certain standard or fixed method by which profits
25 sought to be recovered may be estimated and determined with a

1 fair degree of accuracy. So in other words, he would still
2 have to prove his damages through sufficient methodology and
3 competent evidence. So, even if you took him at his word on
4 his profit margin, I don't think that there are sufficient
5 other damages numbers, in the case, that you could make -- draw
6 that conclusion. And I'll get to that in a minute.

7 Just because the Court found that GMAC violated the
8 CFA by submitting the assignments signed under oath by
9 Mr. Stephan to try to establish standing in the foreclosure
10 doesn't mean that Mr. Reed suffered any ascertainable losses
11 relating to other properties besides Matlack. He has filed in
12 his proofs to do so.

13 With respect to Old Dell Trace, there is testimony
14 about the failure to sell or rent Old Dell Trace, and Reed
15 asserts the Trust is responsible. Yet the evidence shows that
16 Taylor, Bean & Whitaker's foreclosure occurred because Taylor,
17 Bean & Whitaker improperly foreclosed. That's Mr. Reed's own
18 testimony. Exhibit J shows support for that testimony in his
19 pro se pleading and in his lawyer's letter.

20 The pleading, which is the opposition of the motion to
21 dismiss, complains that the foreclosure left the Reeds unable
22 to sell or rent Old Dell Trace. And the letter from Mr. Whelan
23 explains why Mr. Reed thought that Taylor, Bean & Whitaker
24 still needed to perform under the forbearance agreement.
25 There's no ambiguity. Mr. Reed attributed the foreclosure of

1 Old Dell Trace solely to Taylor, Bean & Whitaker for its
2 actions in improperly foreclosing, when it suited him.

3 As to the contractors, the evidence put forth by
4 Mr. Reed as to the amounts incurred and either paid to
5 contractors or not paid and still due, is unavailing. Mr. Reed
6 hired contractors to perform work on Old Dell Trace, and they
7 performed that work and invoiced him. Those contractual
8 amounts were due by Mr. Reed to the contractors, because
9 Mr. Reed was obligated to pay them. He didn't incur these
10 costs because of GMAC's CFA violation. He incurred these costs
11 because he contracted the work.

12 Further, the amounts themselves provided by Mr. Reed
13 are not entirely supported by the various declarations, which
14 is what I alluded to when we talked a moment ago about the
15 profit margin. The declarations that were submitted into
16 evidence show totals that are much less than that which
17 Mr. Reed had testified to.

18 And to the extent -- and it's not clear to me now
19 based on his closing, but from his opening -- from his pre-
20 trial memo: to the extent that he's seeking to recover
21 contractor's costs and lost equity or profits or the value of
22 Old Dell Trace, he would seem to be double-counting.

23 THE COURT: Let me ask this hypothetical: if GMAC had
24 filed a foreclosure action on Old Dell Trace, if it had been
25 the mortgage servicer on Old Dell Trace and filed -- did the

1 same things wrong that it did with respect to -- with respect
2 to Matlack -- I think there were three things that I identified
3 in the prior opinion -- and Mr. Reed lost his entire investment
4 in the Old Dell Trace property, would the money he put in, in
5 the renovations -- he testified about 2- or 300,000 dollars
6 that he put in -- would that be recoverable damages under the
7 CFA? It's a hypothetical.

8 MS. HAGER: So --

9 THE COURT: GMAC didn't foreclose --

10 MS. HAGER: So can I just add --

11 THE COURT: -- on --

12 MS. HAGER: Right.

13 THE COURT: -- Old Dell Trace.

14 MR. REED: If I could add to the hypothetical --

15 THE COURT: Okay.

16 MS. HAGER: -- that these other things weren't going
17 on, meaning, there's --

18 THE COURT: I mean, you --

19 MS. HAGER: Because I don't think you can look at
20 it --

21 THE COURT: -- you're arguing two things --

22 MS. HAGER: -- in a vacuum. I hear what --

23 THE COURT: You seem to be arguing two separate
24 things. And I had clearly in mind, since it came in this
25 morning, the declarations and prior briefs with respect to Old

1 Dell Trace and the action against Taylor, Bean & Whitaker. And
2 I'll certainly take that into account. But you separately seem
3 to be arguing that none of the money that he put into the
4 renovations, the addition to Old Dell Trace, would be
5 recoverable under the CFA. I'm having -- I'm pushing back a
6 little bit on that.

7 If GMAC had been the servicer and had forced a
8 foreclosure of Old Dell Trace that caused him to lose his total
9 investment that he put in the -- assume it's 300,000 dollars,
10 wouldn't that be -- if this property had been in New Jersey,
11 wouldn't that have been recoverable damages under the CFA? The
12 loss would have been --

13 MS. HAGER: I mean --

14 THE COURT: -- ascertainable.

15 MS. HAGER: I mean, maybe.

16 THE COURT: Stop for a second.

17 MS. HAGER: Sorry.

18 THE COURT: The loss, 300,000 that he put in. He had
19 100,000 dollars that he put down when he bought the house.
20 Assume that the total of what he put in was 300,000. And if
21 there was wrongful foreclosure of that property that violated
22 that CFA, wouldn't his lost investment be ascertainable loss?

23 MS. HAGER: Well, yes, but I -- maybe. I want to
24 qualify it, though, because here's where I'm getting stuck:
25 because the GMAC foreclosure on the Matlack property, while

1 improperly filed --

2 THE COURT: Well, they never did foreclose. They
3 tried.

4 MS. HAGER: It never got sold.

5 THE COURT: Correct.

6 MS. HAGER: So I'm getting stuck --

7 THE COURT: He's still living there.

8 MS. HAGER: I'm getting stuck a little on that. But
9 if we kind of clear out the other stuff and just say -- I mean,
10 you could kind of change the hypothetical around and just say,
11 well, what if the Matlack property was undergoing all of these
12 renovations. And --

13 THE COURT: Yeah. Assume you put --

14 MS. HAGER: -- none of this other stuff is going on.

15 THE COURT: Assume you put 300,000 dollars into the
16 Matlack property, for renovations, improvements to the
17 property, and GMAC had wrongfully foreclosed on it.

18 MS. HAGER: Foreclosed.

19 THE COURT: Wouldn't --

20 MS. HAGER: Sold.

21 THE COURT: Yeah. The house is gone. You know, it's
22 a hypothetical.

23 MS. HAGER: Right, but just because that makes a
24 difference, right? But, yes, if you put in that work, they
25 improperly foreclosed. He either didn't challenge it or lost,

RESIDENTIAL CAPITAL, LLC, ET AL.

121

1 or somehow it ended up that they sold the property before his
2 claim got resolved. I would see a closer causal nexus there.
3 I'm still -- I don't think I can say yes for sure. But, I
4 mean, definitely a closer nexus --

5 THE COURT: Well, what I'm trying --

6 MS. HAGER: -- in that scenario, because now the
7 property's gone.

8 THE COURT: What I'm trying to separate out is the
9 issue of ascertainable loss. On the one hand, you seem to be
10 arguing that his investment in the renovations, addition, could
11 not be ascertainable loss, and separately arguing -- I
12 understand it -- the causation issue, because in the case in
13 Virginia, he argued that Taylor Bean was responsible for it.
14 And he argued in the case against MetLife and Citibank that
15 they were responsible for it.

16 So I understand there's a -- there definitely is a
17 proximate-cause issue. But in terms of the ascertainable-loss
18 issue, do you disagree that if he invested the money for
19 improvements and then lost it all because of a wrongful
20 foreclosure, that that wouldn't amount to ascertainable loss?

21 MS. HAGER: Well, again, I suppose where I'm getting
22 stuck is because it's for two separate properties. And so, to
23 me, I guess it is part of the causation too.

24 THE COURT: Oh, I recognize --

25 MS. HAGER: I think, if it's --

RESIDENTIAL CAPITAL, LLC, ET AL.

122

1 THE COURT: -- a big causation issue.

2 MS. HAGER: Yeah, and that's where I'm just
3 having -- I'm not trying to not answer you, but that's here I'm
4 having a hard time quite getting to it, because as I do -- as I
5 see it as we currently sit, I see that he undertook various
6 contracts, by the way, in large part, at the end of 2008 and in
7 2009 when he knew he was denied by TD Bank.

8 So he already knew he wasn't getting money from TD
9 Bank. Maines and Kline, I'm not sure exactly when those
10 conversations happened. I think Kline seemed to think more
11 strongly that it was 2008, but Maines didn't know if it was
12 2008 or 2009.

13 If all those conversations happened in 2008, he went
14 down to Virginia in November of 2008 and undertook more work,
15 knowing he wasn't getting any money.

16 THE COURT: Well, he also knew --

17 MS. HAGER: So --

18 THE COURT: He left one thing out in the places where
19 he was looking for money, and that was MetLife. But I have
20 your point. I'm just -- I'm just trying to separate out,
21 because you seem to be arguing that what he invests in
22 improvements to the property could not amount to ascertainable
23 loss. That I'm having a problem -- that argument I'm having a
24 problem with.

25 The causation -- there are multiple steps in the

1 causation -- multiple arguments that you raised in your cross-
2 examination today and in the depositions and declarations that
3 you put in, that raise questions about causation; but I'm just
4 trying to separate out the ascertainable-loss issue from the
5 causation issue.

6 MS. HAGER: Right. Understood. I think, if we're
7 assuming that everything happened on Matlack and that was the
8 house that was being improved and it ended up getting sold
9 improperly, out of foreclosure, and then he and his family are
10 out of the house and the sale shouldn't have happened, taking
11 it one step further, now some third party's in there, right?
12 So it's a situation where it's not as easy as getting the house
13 back.

14 I think there is more of an argument there that what
15 he put in could be an ascertainable --

16 THE COURT: Okay.

17 MS. HAGER: -- loss.

18 THE COURT: All right, go ahead.

19 MS. HAGER: And maybe I can't directly answer your
20 question as to Virginia, because I'm getting caught up on the
21 causation part.

22 THE COURT: Oh, I --

23 MS. HAGER: But as I --

24 THE COURT: -- I understand that.

25 MS. HAGER: But as I see it, by the time he got down

1 there in November of 2008, he knew that he wasn't getting
2 financing from any of the three main sources he's been talking
3 about. He knew that. And he went ahead and did the work
4 anyway. He entered into contracts with these contractors; they
5 were there for his obligation. It had nothing to do with GMAC.

6 At that time --

7 THE COURT: Once you do the demolition, you go to
8 go -- I mean --

9 MS. HAGER: Well, the testimony on the kitchen, I
10 mean, that was the first that I was hearing of that testimony
11 today. The testimony that I took in the deposition was that he
12 ripped the kitchen out in November of 2008. Right? So, coming
13 in here today, the testimony, in my mind, was that when he went
14 down in November of 2008, relying on the Cooper money, he went
15 in and took out the kitchen and went down that road.

16 And so what my point on that was going to be was at
17 that point he only had about 21,000 dollars' worth of work left
18 for the master and the sunroom. And instead of taking the
19 Cooper money and dealing with the kitchen, couldn't he have
20 just left the kitchen there and taken the Cooper money, spent
21 the twenty-one grand, finished off the master, finished off the
22 sunroom? Then he could have gotten his CO. Okay. Well, in
23 testimony today, Mr. Reed testified that in fact some of the
24 kitchen demo had already taken place. So that's to Your Honor
25 to weigh that testimony. But if the whole kitchen was still

1 there in November, I think it's a different story.

2 With respect to the Cooper money, the reason that
3 that's important is because we know from the prior trial that
4 Mr. Reed got 400,000 and he was also -- had started to get
5 25,000 a month; he got that for two months. And then
6 Mr. Cooper had stopped paying, which is essentially 450,000
7 dollars for nothing, because Cooper never took the property.

8 Mr. Reed testified today that he got approximately
9 100,000 dollars in June of 2008 from the sale of the
10 Brookschase lot. During that same time, we know that he was
11 not making payments on Matlack and he was receiving disability
12 payments. So he had cash sufficient to complete the
13 renovations at the end of 2008, early 2009, even if you're
14 counting the 80- to 100,000 dollars for the kitchen, which, for
15 the amount of work that was left on the kitchen, is, again,
16 something that Your Honor would need to weigh.

17 He made choices, conscious choices, about what to do
18 with that money. He had hundreds of thousands of dollars. He
19 didn't pay off Matlack. He testified he had the money to do
20 that. He instead put more money into Old Dell Trace. And
21 maybe he did it because he thought he could sell it. Maybe he
22 didn't realize what was going on in the market at the time.
23 But in any event, he made these choices. He made a choice not
24 to pay Old Dell Trace after a certain time. These are not
25 GMAC's fault or responsibility.

1 Mr. Curley: Mr. Curley really doesn't have a memory
2 of what went on. With respect to the attempted financing on
3 Matlack, he has absolutely no documentation. This is something
4 that maybe happened in 2008, maybe happened in 2009. He
5 doesn't know. But there's no documents. And interestingly,
6 there's a lot of documents for the blanket loan.

7 So I don't know how you explain that. But he really
8 didn't know. He has this vague recollection of the attempted
9 refinancing sort of being in play, and hearing from someone in
10 his office, his lender in his office, that there is a lis
11 pendens. Well, we can recall from the prior trial that there
12 were issues regarding the lis pendens and the timing of the
13 Court's dismissal of the case versus how long the lis pendens
14 stayed in play and that action was not taken to get the lis
15 pendens removed.

16 Mr. Reed testified, through his prior deposition
17 testimony, that there were significant missed payments to TD
18 Bank with respect to the blanket loan. And even if Mr. Reed
19 had gotten a loan from TD Bank, he can't prove that he would
20 have used that money -- or he can't prove how he would have
21 used that money. He can't prove that he would have used it to
22 make mortgage payments to one of these lenders. He can't prove
23 that he would have used it to finish the work. I don't know
24 that there's specific testimony on it. My recollection of the
25 settlement is that it's kind of all over the place with all

1 these things that he had going on, all these various
2 opportunities.

3 There was definitely a lot going on, but there's no
4 clear testimony about what would have happened. That's even
5 assuming he could have gotten that loan, because despite
6 Mr. Curley coming in and giving testimony, what was very clear
7 was that he doesn't remember what was going on with that
8 request; he doesn't remember that the blanket (sic) had serious
9 delinquencies on it. He had no idea.

10 When he talked about Mr. Reed's financials that were
11 collected in connection with the blanket lien, he had indicated
12 that the bank would not have made a loan on Matlack with the
13 severe delinquencies that the property had on it at the time.
14 He testified that when the paperwork for the blanket loan was
15 done in April of '08, that the bank was aware that the Matlack
16 property had -- was past due for a few months. So that's
17 documented. So they made that loan, but that was not secured
18 by Matlack.

19 So in response to the question about Matlack and the
20 reason that that's different is because you wouldn't want to be
21 a second mortgage behind a severely delinquent first. He
22 clarified that in his testimony. No, TD Bank would not want to
23 be a second mortgage behind a delinquent first.

24 So he may have this recollection of this lis pendens.
25 Maybe he does; maybe he doesn't. It's not documented. We

1 don't know when that happened. But we do know that the loan
2 would never have been approved. Likewise, with respect to
3 Maines and Kline: they both gave testimony that if they knew
4 how delinquent Mr. Reed was on his Matlack property, they would
5 not -- in the case of Ms. Kline, would not have lent him the
6 money and, with respect to Mr. Maines, would not have entered
7 into the partnership with Mr. Reed.

8 With respect to the New Jersey rental properties and
9 the Oxford House tenant, through deposition testimony, which
10 Your Honor I'm sure will have a chance to read, the CEO of
11 Oxford House, Paul Molloy, testified that the reason that they
12 moved out of the houses was because the houses were getting
13 foreclosed on. As Your Honor saw, there was some back-and-
14 forth over the assignment of rents. Oxford House sort of
15 didn't know who to pay, because the banks said, pay us;
16 Mr. Reed said, don't pay them. And they didn't want anything
17 to do with it, so they moved out. Mr. Molloy testified that
18 they didn't care about any foreclosure on Matlack and they
19 didn't know about any foreclosure on Matlack.

20 Simply stated, Mr. Reed has not established causation
21 or an ascertainable loss. It's his burden to do so. After
22 four days of -- well, three days of his testimony that he was
23 unable to do so, and I think we have fifteen, or so, witnesses,
24 and there's really nothing that's been put into the record that
25 can show that the specific CFA violation by GMAC caused any

1 ascertainable loss by Mr. Reed, particularly when you consider
2 all the other things that were going on at the time, and the
3 other testimony that he has given, and the other submissions to
4 court -- to various courts, that he has made, that are
5 inconsistent among themselves and with what he has said in
6 court here this week. Thank you.

7 THE COURT: Thank you very much. The Court's going to
8 take the matter under submission and I'll decide it in due
9 course, submit an opinion. We're adjourned.

10 MS. HAGER: Thank you.

11 (Whereupon these proceedings were concluded at 2:42 PM)

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2 I N D E X

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4	WITNESS	EXAMINATION BY	PAGE
5	Joan Kline	Ms. Hager	6
6	Joan Kline	Mr. Reed	14
7	Joan Kline	Ms. Hager	22
8	Joan Kline	Mr. Reed	23
9	Frank Reed	Ms. Hager	27
10	Frank Reed	(In colloquy)	101

11

12 CLOSING ARGUMENT

13	Frank Reed	106
----	------------	-----

14

15 EXHIBITS

16	CLAIMANT's	DESCRIPTION	PAGE
17	10	Ms. Kline's declaration	5
18	TRUST's		
19	C	Plaintiff's memorandum	60
20		of law in support of	
21		motion for summary judgment	
22		in case of Reed v.	
23		Citigroup, Inc.	
24	F	Appeal to Third Circuit	64
25		Court for Reed v.	

Citigroup, Inc.

OTHER LS

J Unidentified 86
Document

RULINGS

		PAGE	LINE
8			
9	Application by Ms. Hager for directed		
10	verdict denied	105	8
11	Application by Mr. Reed for a directed		
12	verdict denied	105	11

1 C E R T I F I C A T I O N
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3 I, Aliza Chodoff, certify that the foregoing transcript is a
4 true and accurate record of the proceedings.

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8 _____

9 Aliza Chodoff (CET**D-634)

10 AAERT Certified Electronic Transcriber

11

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16 Date: September 30, 2016

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